



OHIO ETHICS COMMISSION
THE ATLAS BUILDING
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April 21, 1994

Informal Opinion 1994-INF-0421

Luann Forni, R.N.

[REDACTED]

Dear Ms. Forni:

You have asked if the Ohio Ethics Law and related statutes prohibit you from being employed by the same county that your spouse serves as a County Commissioner.

By way of history, you have explained that your husband is a County Commissioner in Monroe County. You have also explained that you would like to take the position of Public Health Nurse for the Monroe County Health Department.

Based on the facts you have described, you are not prohibited from applying for and being hired as a Public Health Nurse for the Monroe County Health Department. However, as explained in the following analysis, the Ethics Law and related statutes will restrict and condition your spouse's conduct with respect to your hire and during your employment.

Division (A)(1) of Section 2921.42 provides that no public official shall authorize, or employ the authority or influence of his office to secure authorization of any public contract in which a member of his family has an interest. The Ethics Commission has determined that the term "a member of [a public official's] family" includes a spouse. See Ohio Ethics Commission Advisory Op. No. 89-008. The term "public official" includes an elected officer of any political subdivision, including a county. R.C. 2921.01 (A). A county commissioner is a "public official" for purposes of R.C. 2921.42 (A).

The term "public contract," for purposes of R.C. 2921.42, is defined to include the public employment. See R.C. 2921.42 (F). The Ethics Commission has held that any public employment, whether full-time, part-time, temporary, or permanent, falls within the definition of a public contract since the state or a political subdivision is purchasing or acquiring the employee's services. See Advisory Ops. No. 82-003, 85-105, 86-010, 89-005, 90-010, and 92-012.

R.C. 2921.42 (A)(1) prohibits a public official from "authorizing" the employment of a family member, or employing the "authority or influence of his office" to secure authorization of the employment of a family member. See Advisory Ops. No. 85-015,

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86-010, 90-010, and 92-012. See also Advisory Op. No. 91-007. A public official will be deemed to have "authorized" the employment of a family member for purposes of R.C. 2921.42 where the individual could not have been hired without the approval of the official. See Advisory Ops. No. 87-004, 88-008, 90-010, 91-007, 92-008, and 92-012. Accordingly, R.C. 2921.42 (A)(1) prohibits a public official from voting or participating in any decision-making process authorizing or approving the employment of a member of his family. See Advisory Ops. No. 82-003, 89-005, 90-010, and 92-012. See also In re Removal of Steed, Case No. 1909 (Lawrence County July 27, 1989) and Walsh v. Bollas, 82 Ohio App. 3d 588 (Lake County 1992).

Also, R.C. 2921.42 (A)(1) prohibits a public official from using his "authority or influence" to secure the authorization of a public contract in which a member of his family has an interest. See Advisory Ops. No. 91-007 and 92-012. The Commission has explained that, even if a public official abstains from participating and voting in official proceedings, R.C. 2921.42 (A)(1) still prohibits the official from discussing, deliberating, recommending, or otherwise using the authority or influence which is inherent in the position and prestige of his office, including any power over other public officers or employees, to affect the decision-making process regarding a family member's employment. See Advisory Op. No. 92-012.

The prohibition against a public official authorizing or using the authority or influence of his office to secure authorization of the employment of his spouse extends beyond the initial hiring process and prohibits a public official from participating in any matter or decision which would affect the continuation, implementation, or terms and conditions of a family member's employment. See Advisory Ops. No. 82-003, 89-005, and 92-012. These matters and decisions include, but are not limited to, the authorization or approval of payments to the family member for services rendered, and the renewal, modification, termination, or renegotiation of the family member's public employment. See Advisory Op. No. 92-012.

Therefore, in the situation you have described, R.C. 2921.42 (A)(1) prohibits your spouse from voting, discussing, deliberating, recommending, formally or informally lobbying other commission members or any county employees, or otherwise using his position as a county commissioner, in any way, to secure your employment as a county public health nurse. However, R.C. 2921.42 (A)(1) does not prohibit you from being employed by the county health department unless your spouse is the sole hiring authority for the county department of health. As the Ethics Commission explained in Advisory Opinion No. 90-010:

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R.C. 2921.42 (A)(1) is not a "no relatives policy" which determines eligibility for employment with a political subdivision on the basis of family relationships. . . . R.C. 2921.42 (A)(1) does not prohibit a family member of a public official from being employed by the same political subdivision which the official serves; rather it prohibits the public official from taking any action to secure employment for his family member. The purpose of R.C. 2921.42 (A)(1) is to prevent the possibility that a public official may show favoritism in the exercise of his discretionary, decision-making authority in authorizing a contract for public employment. (Emphasis in original).

In addition to the prohibitions of R.C. 2921.42 (A)(1), your husband should be aware of R.C. 102.03 (D), which provides that no public official or employee shall use or authorize the use of the authority or influence of his office to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon him with respect to his duties. A county commissioner is a "public official" for purposes of R.C. 102.03 (D). R.C. 102.01 (B) and (C). The term "anything of value" is defined to include money and the promise of future employment. R.C. 102.01 (G); 1.03. The Ethics Commission has stated that "anything of value" includes payment for employment and other employment related benefits. Advisory Op. No. 92-012.

The Ethics Commission has also held that R.C. 102.03 (D) prohibits a public official or employee from participating, formally or informally, in any matter that directly affects the private pecuniary interests of his spouse. See Advisory Op. No. 92-012. More specifically, R.C. 102.03 (D) prohibits a public official or employee from using his authority or influence, formally or informally, with respect to matters affecting his spouse's public employment. Id. These matters include, but are not limited to, changes in compensation or benefits determined by individual working conditions, the assignment of duties, evaluations, promotions, disciplinary actions, lay-offs, and removal. Id. Furthermore, R.C. 102.03 (D) prohibits a public official or employee from using the authority or influence of his office, formally or informally, to influence the decisions or actions of other officials or employees in matters which would affect the interests of his spouse's individual employment relationship with the county.

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Therefore, in the situation you have described, R.C. 102.03 (D) prohibits your spouse from participating, as a county commissioner, in any matter that would affect your individual compensation, employee benefits, job duties, assignments, or any other matters directly related to your individual employment as a county public health nurse.

You should note, however, that the Ethics Commission has held that R.C. 2921.42 (A)(1) and 102.03 (D) do not prohibit a public official from participating in selected matters involving his family member. A member of a legislative authority of a political subdivision whose family member is an employee who is not subject to a collective bargaining agreement may vote or otherwise participate to secure enactment of an ordinance or resolution to fix the salaries and compensation of the entire class of employees of the political subdivision who are not subject to collective bargaining, provided that the ordinance or resolution does not: (a) establish the salaries and compensation on some basis other than, or in addition to, membership in the class of employees who are not subject to collective bargaining; (b) differentially affect the compensation or salary which the official's family member receives; or (c) secure, renew, modify, or renegotiate the terms of his family member's individual public employment. See Advisory Op. No. 92-012.

In addition, a public official who is a member of a legislative authority is not prohibited from voting on or participating in the ratification of a master contract between a labor organization and his political subdivision where his family member belongs to the employee labor organization and is employed by the political subdivision pursuant to a collective bargaining agreement, unless the family member serves the labor organization as an officer, board member, or member of the negotiating team. See Advisory Opinion No. 89-005. But see Advisory Op. No. 92-017 (if a public official will benefit from health insurance provided to his spouse pursuant to her public employment under a collective bargaining agreement, he is prohibited, by R.C. 102.03 (D), from participating as a public official, in any way, formally or informally, in the approval of the collective bargaining agreement).

With respect to budgetary appropriations, R.C. 102.03 (D) does not prohibit a public official from participating in a general appropriation which includes money to fund a family member's compensation and benefits provided that the amount of the family member's compensation and benefits have been decided independently of the appropriation and the appropriation measure does not provide the official or employee with the authority or discretion to alter the compensation and benefits, or provided that the family member's compensation and benefits are identical to and in common with all

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employees who are not subject to collective bargaining, as discussed above. *Id.* See also Advisory Op. No. 90-004 (a public official is not prohibited from participating in appropriations, for accommodations, supplies, and operating expenses, to a department which employs a family member provided that the appropriations do not provide a definite and particular personal benefit to his family member).

This informal advisory opinion was approved by the Ethics Commission at its meeting on March 29, 1994. It represents the views of the undersigned, based on the facts presented. It is limited to questions arising under Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code, and does not purport to interpret other laws or rules.

If you have any questions, or wish to request a formal advisory opinion, please feel free to contact this Office again.

Sincerely,

Dunnell J. Hardin

Jennifer A. Hardin
Staff Attorney

Enclosures: **Advisory Opinions No. 92-012 and 92-017**
Memorandum on Family Member Hires