

OHIO ETHICS COMMISSION

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David E. Freel, *Executive Director*

November 1, 2004

Informal Opinion 2004-INF-1101

P. Eugene Long, II
Pickaway County Prosecuting Attorney

Dear Mr. Long:

On October 15, 2004, the Ohio Ethics Commission received your request for an advisory opinion. In your letter, you explained that you are writing on behalf of the Pickaway County Sheriff, Dwight Radcliff. The sheriff is considering retiring from his position on December 31, 2004, and filling the newly elected term as sheriff on January 3, 2005. The sheriff's son, Lt. Robert Radcliff, is a Pickaway County deputy sheriff.

Your question is whether the sheriff's retirement affects his son's continued employment with the sheriff's office. Specifically, you have explained that, when he assumes his newly elected term on January 3, Sheriff Radcliff will have to reappoint all of the deputies within the sheriff's office. R.C. 311.04. You have asked whether the Ethics Law prohibits the sheriff from reappointing his son if there is a break in the sheriff's service as a result of his retirement.

Brief Answer

As explained more fully below, if the sheriff chooses to retire from his position as sheriff in December 2004, and assume the newly elected position of sheriff in January 2005, the Ethics Law prohibits him from appointing his son to a position as a sheriff's deputy after he assumes the new term on January 3, 2005. However, based on the Commission's recommendation when it issued its seminal advisory opinion on this topic in 1985, should the sheriff decline to cause a clear and definite separation in his service by terminating his current service to accept retirement, the Ethics Law would not prohibit his son from continuing as an employee of the sheriff's office.

Facts

You have explained that Sheriff Radcliff has been the Pickaway County Sheriff for almost 40 years. The Sheriff's son, Lt. Robert Radcliff, has been employed as a deputy sheriff by the Pickaway County sheriff's office for 23 years.

Lt. Radcliff was appointed by his father before the Ethics Commission issued Advisory Opinion No. 85-015, in which the Commission determined that R.C. 2921.42(A)(1) prohibits a public sheriff from appointing a family member to be an employee of the sheriff's office. At the time the Commission issued its opinion, it also issued a memorandum to county prosecuting attorneys in which it noted that the practice of hiring a family member had existed for many years and that public officials may have relied on past practice when making those hires. For that reason, the Commission recommended prospective application of the opinion to conduct arising after the opinion was issued.

Family Member Hires—R.C. 2921.42(A)(1)

Your question raises issues under R.C. 2921.42(A)(1), which provides that no public official shall knowingly:

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. (Emphasis added.)

For purposes of this section, the term "public official" is defined to include any elected or appointed officer of any political subdivision, including a county sheriff. See R.C. 2921.01(A) and Ohio Ethics Commission Advisory Opinion No. 85-015. In Advisory Opinion No. 85-015, the Ethics Commission concluded that the employment of any person by a county sheriff's office is a public contract, because it is the purchase or acquisition of services. Subsequent to the adoption of Advisory Opinion No. 85-015, and other similar opinions, the definition of public contract in the law was specifically amended to include the employment of an individual by any political subdivision of the state, indicating that the General Assembly agreed with the Commission's definition of the term to include employment.

Therefore, R.C. 2921.42(A)(1) prohibits a county sheriff from authorizing, or using his position to secure authorization, of an employment contract if "a member of his family" has an interest in the employment contract. The phrase "a member of his family" is not defined for purposes of R.C. 2921.42(A)(1). In Advisory Opinion No. 97-004, the Commission defined the phrase as follows:

For purposes of R.C. 2921.42, a "member of his family" has been defined by the Commission as including, but not limited to, the public official's spouse, children (whether dependent or not), parents, grandparents, grandchildren, and siblings. (Citations omitted.) The Commission has also included in this definition any other persons related to the official by blood or marriage who reside in the same household as the official.

The sheriff's son is "a member of [the sheriff's] family," for purposes of the restriction in R.C. 2921.42(A)(1), regardless of where the son resides.

Therefore, R.C. 2921.42(A)(1) prohibits the sheriff from authorizing, or using his position to secure authorization, of an employment contract for his son. The restriction in R.C. 2921.42(A)(1) is a fourth-degree felony.

Generally, if an official makes the final hiring decisions for the public agency he serves, his family members cannot be employed by the public agency. For example, a county sheriff cannot hire a family member and cannot delegate the authority to hire his family member to a subordinate employee, which means that his family member cannot be hired by the sheriff's office. Adv. Op. No. 85-015 and 90-010.

However, as noted above, Lt. Radcliff was appointed by his father, Sheriff Radcliff, before the Ethics Commission issued Advisory Opinion No. 85-015, in which the Commission determined that R.C. 2921.42(A)(1) prohibits a public sheriff from appointing a family member to be an employee of the sheriff's office. At the time the Commission issued its opinion, it also issued a memorandum to county prosecuting attorneys in which it recommended that the restriction be applied prospectively to family member hires made after December 2, 1985, the date on which the opinion was issued.

This recommendation for prospective application by the Commission has had the practical effect of "grandfathering," or exempting existing family member hires from the restriction in the ethics law. For that reason, as long as Mr. Radcliff remained the sheriff, with no change in his status other than re-election, the Ethics Commission's recommendation would have been that the county prosecutor in Pickaway County prospectively apply the law, so that the restriction in R.C. 2921.42(A)(1) would not apply to Sheriff Radcliff regarding the continued employment of his son.

However, if Sheriff Radcliff were to retire from the position of sheriff, he would be consciously and intentionally changing his status. In fact, the only permissible manner in which the sheriff can legally accept retirement benefits, and then fill his newly elected term, is to first officially terminate his lengthy career by resigning. As a result of his resignation, there would be a clear and definite separation in the sheriff's service, and the Commission's recommendation for prospective application would no longer apply. In that case, R.C. 2921.42(A)(1) would prohibit the sheriff from appointing his son to be a deputy sheriff if he resigns as sheriff on December 31, 2004 and then assumes the position of newly elected sheriff on January 3, 2005.

Conclusion

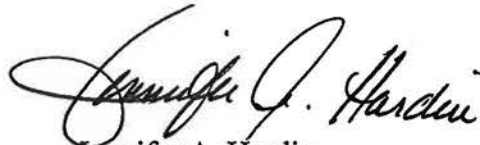
As explained more fully above, if the sheriff chooses to retire from his position as sheriff in December 2004, and assume the newly elected position of sheriff in January 2005, the Ethics Law prohibits him from appointing his son to a position as a sheriff's deputy after he assumes the new term on January 3, 2005. However, based on the Commission's recommendation when it issued its seminal advisory opinion on this topic in 1985, should the sheriff decline to cause a clear and definite separation in his service by terminating his current service to accept retirement, the Ethics Law would not prohibit his son from continuing as an employee of the sheriff's office.

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The Ohio Ethics Commission approved this informal advisory opinion at its meeting on November 1, 2004. The Commission commends the Sheriff for requesting guidance before taking any actions that could be prohibited by law.

The opinion is 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 desire additional information, please feel free to contact this Office again.

Sincerely,

A handwritten signature in cursive script, reading "Jennifer A. Hardin". The signature is written in black ink and is positioned above the printed name and title.

Jennifer A. Hardin
Chief Advisory Attorney