

CAUTION: The following advice may be based on a rule that has been revised since the opinion was first issued. Consequently, the analysis reflected in the opinion may be outdated.

IC 4-2-6-9(a)

IC 4-15-7-1

There was no violation of the Code of Ethics for the wife of the Commissioner of the DOC to be employed by a county juvenile alternative program funded through a community correction grant administered by the DOC.

February 17, 1994

No. 94-I-1

FACT SITUATION

The Commissioner of the Department of Correction wanted to know if he had a conflict of interest if his wife, whom he had recently married, was the director of a program funded through a grant from the Department of Correction and whether it was a violation of the nepotism law for his wife to be employed by this county program funded through the same state grant. Although a manager within the Department of Correction developed the list of community correction programs which received the grants under the program through which his wife's agency was funded, the Commissioner signed off on the grants. However, he had not signed off on any since marrying.

The Department of Correction administered the community correction grants and funded sixty-four different adult and juvenile programs throughout the state. The overall purpose by statute was to divert offenders from entering the Department of Correction and reintegrate offenders into the community. Employees of this program were by statute county employees, and their salaries were set by the counties. The grant requests were developed by boards composed of public sector employees and private citizens with the composition determined by statute. The grant requests were submitted on an annual basis. A deputy commissioner and director of the department reviewed the grant proposals before the Commissioner ultimately signed the approved grants.

The Commissioner's wife had been director of one of the grant funded program for four years. The program operated almost entirely by grant monies, including paying the salaries of the employees. The county commissioners made all the decisions in regard to hiring, dismissal, disciplinary action, and setting the compensation levels. Most of the grants for this particular program came from the Department of Correction, but two were funded by the Criminal Justice Institute. All areas of the state were in one of the regions, and the funding for the program came entirely from state funds.

Therefore, one way to screen the Commissioner out of the decision in regard to the grant to the program was for the county to apply through the Criminal Justice Institute. Although the Commissioner was on the board of trustees of the Criminal Justice Institute, he could more easily be screened there by not participating in any decision that had to do with the grant.

In regard to the nepotism law, it prohibited a head of a department from being in a direct supervisory/subordinate relationship with a spouse. This was not the relationship that existed in this case. The law also prohibited the head of an agency from employing relatives in the agency unless they had held their positions at least twelve months before the individual became head of the agency. In this case, the wife was not an employee of the agency and, therefore, did not fall within that prohibition. In addition, there was language in the nepotism law which said, "nor shall any such relative be entitled to receive any compensation for his or her services out of any appropriation provided by law." Although this language seemed to suggest that no relative of any agency head could directly or indirectly receive compensation out of state appropriations, the Commission did not read it to mean this.

QUESTION

Does the Commissioner of the Department of Correction have a conflict of interest if his wife, whom he recently married, is the director of a program funded through a grant from the Department of Correction and is it a violation of the nepotism law for his wife to be employed by this county program funded through the same state grant?

OPINION

The Commission found it was not a conflict of interest for the Commissioner of the Department of Correction if his wife was a director of a program funded through a grant from the Criminal Justice Institute, and the Commissioner abstained from voting on the grant, and it was not a violation of the nepotism law for the Commissioner of the Department of Correction's wife to be employed by a county juvenile alternative program funded through a community correction grant.

THE RELEVANT STATUTES ARE:

IC 4-2-6-9(a)

IC 4-15-7-1