

SUBJECT: SPOUSE OF PUBLIC SAFETY OFFICER RUNNING FOR CITY COUNCIL

SUMMARY:

The spouse of a city council member may continue as an employee of the city without violating the Ethics Reform Act. The council member may vote on general salary increases for city employees but may not participate in personnel issues or salary raises for the family member which are not general personnel policies or general salary increases.

QUESTION:

The City Administrator of Folly Beach states that the city is organized under the strong mayor form of government with the Mayor responsible for hiring, direction, and discipline of all personnel. A year ago, the Mayor hired a Public Safety Officer. The Officer's spouse is running for a seat on City Council. The Administrator questions whether the officer's continued employment violates the ethics statute if his spouse is elected.

DISCUSSION:

This opinion is rendered in response to a letter dated March 12, 1992 requesting an opinion from the State Ethics Commission. The Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act No. 248 of 1991; Section 8-13-100 et. seq., as amended, 1976 Code of Laws). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation.

Section 8-13-750 provides:

(A) No public official, public member, or public employee may cause the employment, appointment, promotion, transfer, or advancement of a family member to a state or local office or position in which the public official, public member, or public employee supervises or manages.

(B) A public official, public member, or public employee may not participate in an action relating to the discipline of the public official's, public member's, or public employee's family member.

Family member is defined in Section 8-13-100(15):

"Family member" means an individual who is:

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- (a) the spouse, parent, brother, sister, child, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild; or
 - (b) a member of the individual's immediate family.

Immediate family is defined in Section 8-13-100(18):

"Immediate family" means:

- (a) a child residing in ... the household;
- (b) a spouse ...; or
- (c) an individual ... claimed as a dependent for income tax purposes.

The Commission advised in Opinion SEC AO92-030, that a son who was hired before his father became the Chief Administrative Officer, would not require termination, but that the father could not participate in personnel matters affecting his son. Section 8-13-750 does not prohibit a family member being employed in the same agency; however, it does prohibit certain actions regarding that family member. Those prohibited actions include causing the employment, appointment, promotion, transfer, advancement, or discipline. The Commission therefore advises that continued employment relationships would be prohibited in regard to taking any action to affect the employment relationship of a family member. The Commission calls attention to the provisions of Section 8-13-700(B) which provides in part as follows:

(B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a member of his immediate family an individual with whom he is associated, or a business with which he is associated shall:

(1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;

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(4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body of any agency, commission, board, or of thereof, on which he serves, who shall cause the statement to be printed in the minutes and require that the member be excused from any voters, deliberations, and other a actions on the matter on which the potential conflict of interest exists and shall cause the disqualification

and reasons for it to be noted in the minutes;

Economic Interest is defined in Section 8-13-100(11) as:

(11) (a) "Economic Interest" means an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more.

(b) This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official, public member, or public employee's position or which accrues to the public official, public member, or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

In Advisory Opinion AO92-096, a county councilman was advised that a family member could be hired by the Agriculture Fair Board since there was no direct management or supervision of the employee by the Councilman. The Commission therefore advises that family members may be employed within the agency, so long as the manager or supervisor exercises no direct management or supervision and takes no other action to affect personnel actions regarding the family member.

As to general salary raise issues, the Council member would not be prohibited from participating in deliberations and votes since the economic interest accrues to all city employees as a class. The Commission advises, however, that in accordance with Section 8-13-700(B), the Council member could not participate in deliberations and votes on matters directly affecting the family member as an individual such as a raise for that specific employee outside the raises approved for all city employees as a group.