

1988-1991 Ky. Op. Atty. Gen. 2-654, Ky. OAG 91-110, 1991 WL 533859 (Ky.A.G.)

\*1 Office of the Attorney General  
Commonwealth of Kentucky

OAG

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July 3, 1991

Pamela J. Todd  
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Ashland, Kentucky 41105-0311

Dear Ms. Todd:

Your letter asks whether a county judge-executive's wife may be hired by the county the judge-executive has been elected to serve without violating the conflict of interest provisions set forth in [KRS 61.220](#). You have examined opinions of this office from as far back as 1961 and you now are "seeking a clearer opinion regarding the situation."

Admittedly the prior opinions of this office have not always been consistent. However, there is no Kentucky case dealing specifically with the husband-wife relationship as it involves conflicts of interest. Furthermore, the statute with which you are concerned does not deal with degrees of relationship and the cases on the subject from other jurisdictions are sometimes in conflict. Finally, it is sometimes difficult to formulate a general rule and even more difficult to apply that general rule to all situations.

This opinion will only attempt to deal with the husband-wife relationship from the standpoint of a conflict of interest situation. We presume that the county involved has no civil service or merit system and that no anti-nepotism ordinance has been enacted by the county. Furthermore, we assume that the candidate for the position involved would fill a legitimate position, perform a function necessary and useful to the county and receive the same treatment and benefits as other employees similarly situated.

[KRS 61.220](#) provides in subsection (1) as follows:

Any member of the fiscal court who becomes interested, directly or indirectly, in any contract for work to be done or material to be furnished for the county or any district thereof, or who becomes interested in any claim against the county or state shall be fined not less than five hundred (500) nor more than five thousand dollars (\$5,000) for each offense.

In OAG 61-527, copy enclosed, this office concluded that a fiscal court could not hire the county judge's wife. In support of that conclusion the opinion cited [KRS 61.220](#) and a Missouri case since no Kentucky cases on point were found. The Missouri case, [Githens v. Butler County, Mo., 165 S.W.2d 650 \(1942\)](#), held in part that a

conflict of interest would arise if the county sold property to the wife of the presiding judge of the county court of that county. At page 652 of the opinion, the Missouri court said in part as follows:

But the husband is under a duty and is liable for his wife's support ([Nielsen v. Richards, 75 Cal.App. 680, 243 P. 697](#)) and in this state he is entitled to dower in his wife's real estate, Mo.R.S.A. §§ 319, 324, either of which are pecuniary interests and disqualifying under statutes requiring such an interest even though it is indirect.

OAG 61-794, copy enclosed, concluded that a county judge could employ his wife. While that opinion cited [KRS 61.220](#), no mention was made of the Missouri case. The opinion said that in absence of a Kentucky decision, [KRS 61.220](#) would not preclude the appointment in question.

\*2 Notwithstanding the opinion mentioned in the preceding paragraph, most of the opinions of this office over the next fifteen years or so concluded that [KRS 61.220](#) would prohibit a county from employing the wife of the county judge of that county and would prohibit the county from entering into any contractual dealings with the wife of the county judge of that county. See, for example, OAG 64-466, OAG 66-305 and OAG 69-375, copies enclosed, all of which cite in part [KRS 61.220](#) and the case of [Githens v. Butler County, Mo., 165 S.W.2d 650 \(1942\)](#).

Note, however, that in OAG 77-343, copy enclosed, this office concluded that a fiscal court could appoint the county judge's wife as county treasurer. The opinion referred to [KRS 61.220](#) but stated that the county judge's interest in his wife's salary is "rather speculative." The county judge's interest is not an indirect interest prohibited by the statute. "In addition, the statute seems to strike at contracts involving direct or indirect interest. We doubt that the statute was designed to prohibit a claim arising out of regular county employment." The opinion concluded with the statement that, "Any prior opinions in conflict with this opinion are modified accordingly."

In a miscellaneous letter to Mr. Ed Logsdon, dated September 7, 1982, copy enclosed, the Attorney General mentioned [KRS 61.220](#), [Githens v. Butler County, Mo. 165 S.W.2d 650 \(1942\)](#), OAG 64-466 and OAG 69-375. While concluding that the matter is ultimately one for the Kentucky courts to resolve, the Attorney General said in part:

However, since that 1942 decision there have been many changes in the status of women, with the trend being toward the consideration of a wife as an independent individual whose financial interests may be separate and distinct from that of her husband. Certainly, an argument can be made that as long as the spouse of a county judge-executive can demonstrate that the money she earns in such a position does not go to the benefit, either directly or indirectly, of the county judge-executive, then no violation of [KRS 61.220](#) would exist.

In a 1931 annotation in [74 ALR 792](#) entitled "Relationship As Disqualifying Interest Within Statute Making it Unlawful for an Officer to be Interested in a Public Contract," the following is set forth as the general rule:

The question whether relationship is a disqualifying interest within a statute making it unlawful for an officer to be interested in a public contract has been directly presented in comparatively few cases.

In almost every instance relationship has been held to have no disqualifying effect.

In the case of [Thompson v. District Board of School District No. 1, 252 Mich. 629, 233 N.W. 439 \(1930\)](#), the court held that a member of the school board has, in a state where a married woman's earnings are her own property, no such interest under the conflict of interest statute as will preclude him and the board from employing his wife as a teacher. The court said in part as follows:

\*3 The words 'directly or indirectly' were obviously used in this statute to make it broad enough to prevent an officer who might be so disposed from circumventing and defeating this provision of the law. The most common violations are those incident to contracts with corporations in which the school officer is a share-

holder or with partnerships in which he is a member. In such instances there is clearly an 'indirect' interest. Cases of this character are reported in [Consolidated Coal Co. v. Board of Trustees, 164 Mich. 235, 129 N.W. 193](#) and [Ferle v. City of Lansing, 189 Mich. 501, 155 N.W. 591, L.R.A. 1917 C, 1096](#). These decisions are not applicable to the case at bar. We are of the opinion that the instant contract should not be held to be in violation of the quoted provision of the school law, nor do we know of any good reason why it should be held to be contrary to public policy.

In 63A Am.Jur.2d, Public Officers and Employees, § 341 the following appears:

In the cases in which the question has been presented, it has ordinarily been held that relationship is not a disqualifying interest within a statute making it unlawful for an officer to be interested in a public contract. There are, however, decisions to the contrary, particularly where the relationship is that of husband and wife.

In McQuillin Mun. Corp. (3rd Ed.), Vol. 10A, § 29.97 it is stated in part:

The interest of an officer, which will render void a contract with a city, is a present, personal and pecuniary interest. It is generally held that an officer may contract with a city after resignation from the municipal service. Although in particular circumstances they have been held to be invalid, transactions between cities and the relatives of officers frequently have been sustained.

The conflict of interest provisions applicable to cities prohibit municipal officers from becoming directly or indirectly interested in contracts with the cities they are serving. See, for example, [KRS 61.260](#), [KRS 61.270](#) and [KRS 61.280](#). In numerous opinions over the years this office has concluded that, generally, there is no statutory or constitutional prohibition against a city hiring the wife of the mayor or a member of council. See OAG 69-508, OAG 71-279, OAG 73-222, OAG 76-19 and OAG 76-76, copies of which are enclosed.

In conclusion, it is our opinion that the wife of a county judge-executive and the wife of a magistrate may be hired by the fiscal court of which the county judge-executive and the magistrate are members without violating the conflict of interest provisions set forth in [KRS 61.220](#). There is no reported Kentucky case dealing with the husband-wife relationship as it pertains to conflicts of interest, and the Missouri case cited in earlier opinions of this office appears to be the minority view.

OAG 61-527, OAG 64-466, OAG 66-305, OAG 69-375, and any other prior Attorney General opinions in conflict with this opinion are modified accordingly.

Sincerely,

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