ANTI-NEPOTISM

STEPMOTHER-IN-LAW OF DIRECTOR OF COUNTY VETERANS AFFAIRS DEPARTMENT

To: Cynthia L. Hall, Esq., County Attorney's Office (Monroe County)

SUMMARY:

The stepmother of a public official's spouse is not the official's "relative" within the meaning of the anti-nepotism law (Section 112.3135, Florida Statutes). Thus, Section 112.3135 would not prohibit the director of a county veterans affairs department from promoting, or recommending for promotion, her spouse's stepmother. CEOs 14-9, 10-6, and 91-23 are referenced.¹

QUESTION:

Is the stepmother of one's spouse one's "relative" within the meaning of Section 112.3135, Florida Statutes (the anti-nepotism law)?

Your question is answered in the negative.

In your letter of inquiry, you relate that the current Director of your County's Veterans Affairs Department recently has been appointed, that the Department has nine employees, and that one of the

¹ Prior opinions of the Commission on Ethics may be obtained from its website (www.ethics.state.fl.us).
employees (employee), who was hired before the current Director was appointed, is the stepmother of the Director's spouse. You ask whether the employee can be promoted within the Department without the Director running afoul of Section 112.3135, Florida Statutes (the anti-nepotism law). That statute provides, with emphasis supplied:

112.3135 Restriction on employment of relatives.
(1) In this section, unless the context otherwise requires:
   (a) "Agency" means:
      1. A state agency, except an institution under the jurisdiction of the Division of Universities of the Department of Education;
      2. An office, agency, or other establishment in the legislative branch;
      3. An office, agency, or other establishment in the judicial branch;
      4. A county;
      5. A city; and
      6. Any other political subdivision of the state, except a district school board or community college district.
   (b) "Collegial body" means a governmental entity marked by power or authority vested equally in each of a number of colleagues.
   (c) "Public official" means an officer, including a member of the Legislature, the Governor, and a member of the Cabinet, or an employee of an agency in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals or to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in an agency, including the authority as a member of a collegial body to vote on the appointment, employment, promotion, or advancement of individuals.
   (d) "Relative," for purposes of this section only, with respect to a public official, means an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(2)(a) A public official may not appoint, employ, promote, or advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the agency in which the official is serving or over which the official exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual or if such appointment, employment, promotion, or advancement is made by a collegial body of which a relative of the individual is a member. However, this subsection shall
not apply to appointments to boards other than those with land-planning or zoning responsibilities in those municipalities with less than 35,000 population. This subsection does not apply to persons serving in a volunteer capacity who provide emergency medical, firefighting, or police services. Such persons may receive, without losing their volunteer status, reimbursements for the costs of any training they get relating to the provision of volunteer emergency medical, firefighting, or police services and payment for any incidental expenses relating to those services that they provide.

(b) Mere approval of budgets shall not be sufficient to constitute "jurisdiction or control" for the purposes of this section.

(3) An agency may prescribe regulations authorizing the temporary employment, in the event of an emergency as defined in s. 252.34, of individuals whose employment would be otherwise prohibited by this section.

(4) Legislators' relatives may be employed as pages or messengers during legislative sessions.

The Director would be a "public official" (person with hiring, promotion, or recommending for hiring or promotion authority) in relation to the promotion of the employee (an employee within her Department and the stepmother of her spouse). Therefore, the issue is whether the employee is the Director's "relative," by virtue of being the stepmother of the Director's spouse. We find that the employee is not the Director's "relative."

While we have not considered this particular issue before, our finding is guided by the language (or lack of language) of Section 112.3135 itself, our prior decisions, decisions of the Attorney General, and case law. To begin with, we note that while the statute's definition includes mother-in-law, it does not also include stepmother-in-law. The Florida Supreme Court has strictly interpreted the anti-nepotism law and has definitively rejected the argument that the statute should be broadly construed. City of Miami Beach v. Galbut, 626 So. 2d 192 (Fla. 1993); see also, Holly v. Auld, 450 So. 2d 217 (Fla. 1984), in which the Court reasoned that:

When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning. It has also been accurately stated that courts of this state are without power
to construe an unambiguous statute in a way that would extend, modify, or limit, its express terms or its reasonable and obvious implications. To do so would be an abrogation of legislative power.

Furthermore, Attorney General's Opinion (AGO)\(^2\) 073-31 states that "[t]he specific relationship of a stepdaughter-in-law is not included within the definition of 'relative' set forth in [the anti-nepotism law]."\(^3\) Therefore, the Attorney General opined that the legislature did not intend to extend the statute's anti-nepotism prohibition to a "stepdaughter-in-law."\(^4\) This point also is supported by reference to CEO 10-6, where the Commission determined that a mosquito control district commissioner voting on her district's acquisition of real property owned by business entities created and owned by her brother-in-law would violate the voting conflicts law—Section 112.3143, Florida Statutes—because the statute's definition of relative included "brother-in-law." See, also, CEO 91-23 ("stepdaughter" listed in the statute).

AGO 073-31 also points out "not only is the relationship of a 'stepdaughter-in-law' not mentioned in the statute, it is not defined in any of the standard legal texts nor is it defined in any of the decisional case law." Following the Attorney General's reasoning, if a stepdaughter-in-law does not fit under the statute's definition of a "relative," then neither would a stepmother-in-law.

Additionally, CEO 14-9 found that a property appraiser would not be prohibited from offering

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\(^2\) Prior to 1989, the anti-nepotism law was in Ch. 116 and was interpreted by the Attorney General.

\(^3\) Section 116.111 Florida Statutes (renumbered as Section 112.3135), does not prohibit employment by a county of a "cousin-in-law" or "sister-in-law by marriage" of a current member of the county commission. AGO 85-35.

\(^4\) The interpretation of AGO 073-31 is based upon the rule of statutory construction, embodied in the phrase \textit{expressio unius est exclusio alterius}, which means that had the legislature intended to include those other familial relationships, it would have listed them.
his former wife's daughter (his former stepdaughter) a position in the property appraiser's office. The opinion reasoned that while the law would prohibit the appraiser from offering his current "stepdaughter" a position in the property appraiser's office, it would not prohibit him from offering a position to his former stepdaughter. There, the Commission applied the same principle of statutory construction the Attorney General used in AGO 85-35, *expressio unius est exclusio alterius* (the expression of one thing is the exclusion of the other).

Accordingly, we find that a stepmother-in-law\(^5\) is not one's "relative" under Section 112.3135, Florida Statutes, and, thus, that the Director is not prohibited by the statute from promoting, or recommending for promotion, her spouse's stepmother.

GWN/mlj/dw

c: Cynthia L. Hall, Esquire

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\(^5\) Black's Law Dictionary, while defining stepmother as "the wife of one's father by virtue of a marriage subsequent to that of which the person spoken of is the offspring," contains no entry or definition for stepmother-in-law.
February 28, 2019

By U.S. Mail and by email to: doss.virlindia@leg.state.fl.us

Ms. Virlindia Doss
Executive Director
The Florida Commission on Ethics
P.O. Drawer 15709
Tallahassee, Florida 32317-5709

Re: Request for Opinion for Cathleen Ayala Crane

Dear Ms. Doss:

I write on behalf of Cathleen Ayala Crane. Ms. Ayala Crane has recently been promoted into a position as a department head in Monroe County, Florida. Ms. Ayala Crane is seeking guidance on whether she is allowed to occupy the department head position under the anti-nepotism provision within the Florida Code of Ethics contained in F.S. 112.3135, given that her stepmother-in-law is an existing employee within the department.

Monroe County is a political subdivision of the State of Florida and a non-charter county. Ms. Ayala Crane was recently selected by Monroe County as the Department Head of the Monroe County’s Veterans Affairs department (“Department”). The Department assists active duty personnel and military retirees as well as veterans and their families to obtain federal benefits related to service in the armed forces and certain benefits conferred by the State of Florida. The Department’s functions are outlined at F.S. 292.10 et seq. In her capacity as Department Head, Ms. Ayala Crane reports to the County Administrator, who in turn reports directly to the Monroe County Board of County Commissioners (BOCC).

There are a total of nine (9) employees in the Department: the Department Head (referred to as a Director); a Deputy Director; three (3) Veteran’s Service Officers, one of whom also serves as the Veterans Transportation Administrator; an Executive Assistant;
an Administrative Assistant; and two (2) Veterans Transportation Drivers. The nine employees in the department are split between two offices, Key West and Key Largo.

Ms. Ayala Crane is herself a veteran, having served in the United States Army for 11 years. Ms. Ayala Crane has worked for Monroe County since March 2018. Her entire employment with Monroe County has been with the Veteran’s Affairs department. Prior to her recent promotion, she held the position of Veteran’s Service Officer/Veteran’s Transportation Administrator. Prior to working for Monroe County, Ms. Crane worked for the Monroe County Clerk of Court for approximately 2 years, and the Monroe County Tax Collector for approximately three and a half years.

Ms. Dawn Crane is the Administrative Assistant in the Veterans Affairs Department. Ms. Dawn Crane has worked for the Department for five and a half years. Ms. Dawn Crane’s primary responsibilities are to receive and route incoming mail; schedule appointments for Key West office staff; assist in annual budget preparation; coordinate purchasing for the Department, including issuance of purchase orders and audits slips; fill out transportation driver time cards; and answer telephones and greet the public.

Ms. Ayala Crane is married to Ms. Dawn Crane’s stepson. In other words, the Director is the stepdaughter-in-law of Ms. Dawn Crane, and Ms. Dawn Crane is the Director’s stepmother-in-law.

The three Veteran’s Services Officers and the Administrative Assistant (Ms. Dawn Crane) report directly to the Deputy Director, and then to the Director. (The Deputy Director, Executive Assistant, and two transportation drivers report directly to the Director.)

**Time sheets, performance evaluations, leave requests:** The Deputy Director signs the time sheets of the employees under his supervision. He also signs the annual performance evaluations and approves all leave requests. The Deputy Director then presents the paperwork to the Director for review, approval and signature. The Director signs the time sheets directly for the Executive Assistant, Deputy Director and transportation drivers.

In the current fiscal year, County employees received a cost of living allowance (COLA) increase, only. The COLA percentage was 2.1%. All County employees received the 2.1% wage increase. From time to time in prior years, additional funds have been allotted by the BOCC for a merit increase in addition to COLA. In the years in which funds were available for merit increases, County employees received an increase in their next year’s salary in proportion to the scores that they received on their annual performance evaluations.

**Discipline:** Similarly, the Deputy Director is initially responsible for meting out discipline for the employees who report directly to him in accordance with rules laid out in the Monroe County Personnel Policies & Procedures Manual, on a continuum ranging from a simple warning on the low end up to demotion, suspension, and possibly even termination, subject to review and approval by the Director and ultimately the County Administrator. The Director would handle disciplinary issues for her direct reports.
Promotional Opportunities: If a position opened up within the Department, and an employee within the Department who reported to the Deputy Director applied for the position, under Monroe County personnel rules, the Deputy Director would evaluate the employee for that promotional opportunity and make a recommendation on the application. The recommendation would then be presented to the Director, and ultimately to the County Administrator, for review and approval. \(^1\) If one of the Director's direct reports applied for a promotion within the Department, the Director would make the same evaluation and recommendation.

However, it is important to note that the promotional opportunities within the department for Ms. Dawn Crane would be limited to one position only, the Executive Assistant. Ms. Dawn Crane is not a veteran, and therefore is not eligible for the position of Veteran's Service Officer. \(^2\) The transportation drivers are currently a lower classification (and therefore, lower pay) than Ms. Dawn Crane's current position. Therefore, as a practical matter, the only position to which she reasonably would promote would be the Executive Assistant. Currently, that position is assigned in Key Largo, and Ms. Dawn Crane lives in Key West, approximately 90 miles away. It is therefore unlikely that Ms. Dawn Crane would apply for the one promotion opportunity position, although not impossible.

Ms. Cathleen Ayala Crane and this Office have reviewed the definition of "relative" in F.S. 112.3135(3)(a). We note that the statute refers to "mother-in-law" and "stepmother," but not "stepmother-in-law." In addition, we note that we did find an Attorney General opinion stating that stepdaughter-in-law would not be included within the definition of a "relative" for purposes of the anti-nepotism statute. AGO 073-31. We are also mindful of AGO 85-35, noting the penal nature and judicial strict construction of the anti-nepotism law, CEO 14-9 (stating that a former stepdaughter is not a stepdaughter for purpose of the statute), and CEO 94-39 (where the prohibited relationship came into being after the employee's initial hire, stating that the statute would not require the underling employee's discharge, but would prohibit promotions and advancement). We have found no Ethics Opinion directly on point for stepmother-in-law, however.

Thank you for your assistance with this request for guidance. Please let me know if further information would be helpful to your staff in rendering such guidance.

\(^1\) Under F.S. 125.74(1)(k), the County Administrator is ultimately responsible for selection, employment, promotion and supervision including discipline of all BOCC employees. Therefore, all department head recommendations on these topics are reviewed and approved by the County Administrator.

\(^2\) Per F.S. 292.11, a veteran service officer must be a veteran who served as a member of the Armed Forces of the United States during a period of war, who served at least 18 months of active duty, and who was honorably discharged, or the surviving spouse of the veteran.
Good morning, Ms. Doss. On behalf of Ms. Cathleen Ayala Crane, this office is writing to request an ethics opinion. Further details are in the attached letter.

As always, thank you for your guidance.