File 2830 — January 23, 2026

NEPOTISM RESTRICTIONS FOR CITY COUNCIL MEMBERS

APPLICATION OF THE ANTI-NEPOTISM PROVISION TO CITY COUNCIL LEADERSHIP ELECTIONS

To: Jason Teal, City Council Legislative Counsel (Jacksonville)

SUMMARY:

A City Council Member would violate the anti-nepotism prohibition in Section 112.3135, Florida Statutes, if the City Council appoints his father, who is also a City Council Member, to a leadership position within the City Council. Referenced are CEOs 95-12, 96-5, 98-7, 06-13, 18-17, 19-12, and 21-9.

QUESTION 1:

Would the anti-nepotism prohibition found in Section 112.3135, Florida Statutes, be violated were the father of a member of the Jacksonville City Council (who himself is also a City Council Member) to be appointed by his peers on the Council to be President or Vice President of the Council?

This question is answered in the affirmative.

In your ethics inquiry, you indicate that you currently serve as the Legislative Counsel to the Jacksonville City Council, and have requested this opinion on behalf of a Council Member.

You note that the father of the City Council Member on whose behalf you have requested this opinion also serves on the City Council.

You indicate the Jacksonville City Council is a 19-member, independently elected legislative body of the City of Jacksonville. You state that pursuant to the Jacksonville's Charter, City Council Members have a duty to annually elect Council leadership in the form of the Council President and the Council Vice President.[1] Against this backdrop, you ask what ethical prohibitions exist that may impact the Council Member if his father decides to run for Council leadership.

The statutory provision relevant to your inquiry is Section 112.3135(2)(a), Florida Statutes, which is the anti-nepotism statute. In Florida, the prohibition against nepotism in government has existed in some form since 1933. See Chapter 16088, Acts of 1933 (House Bill 178). The overriding theme and purpose of the current anti-nepotism law is that persons not be placed in public positions by the actions of their relatives or by the actions of collegial bodies upon which their relatives sit. See CEO 96-5 and CEO 06-13. Turning to the language of the anti-nepotism statute, Section 112.3135(2)(a), in relevant part, states:

> 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,

[1] See Section 5.08 of the Jacksonville, Florida Code of Ordinances.

> 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.

Relevant to this inquiry, Section 112.3135(2)(a) prohibits a public official from appointing, promoting, or advancing a relative, or advocating for the appointment, promotion, or advancement of a relative, in or to a position in the agency in which the official serves.[2] Here, the positions of Council President and Council Vice President are both positions within the agency in which the Council Member and his father serve.

Section 112.3135(2)(a) also makes clear that an individual may not be appointed, promoted, or advanced in or to a position in an agency if the appointment, promotion, or advancement is made by a collegial body of which a relative of the individual is a member. The language regarding collegial bodies was added to the statute in Chapter 94-277, Laws of Florida. It is important to note that here, the collegial body at issue is the Jacksonville City Council.

As such, the question becomes whether the City Council Member's father being elected as Council President or Council Vice President constitutes a prohibited "appointment," "promotion," or "advancement" made by the City Council Member's collegial body.

In analyzing Section 112.3135(2)(a), it is important to note that the anti-nepotism provision does not just apply to employment situations, it also applies to office holding. For instance, in In

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[2] The term "relative" is defined in Section 112.3135(2)(d) and expressly includes a public official's "father" and/or "son."

re Wanda Range, Final Order No. 20-001, the Commission on Ethics found that a City Council Member violated Section 112.3135 when the city council of which she and her first cousin were members voted to appoint her first cousin as the Mayor Pro Tem of the City during a Council meeting. The scenario in that case is the same as the scenario presented in the instant inquiry. Namely, an elected local officer's collegial body appointing that officer's relative — who was also a member of the same collegial body — to a leadership position within the collegial body.

In Slaughter v. City of Jacksonville, 338 So. 2d 902, 904 (Fla. 1st DCA 1976), the First District Court of Appeal found the terms "promotion" or "advancement" corresponded to "an increase in grade which elevates [one] to a higher rank or position of greater personal dignity or importance." Similarly, AGO 83-81 contains a detailed analysis of Slaughter and concludes that an "advancement" or "promotion" contemplates an elevation in station or rank.[3]

Here, from a review of the Jacksonville Code of Ordinances, it is clear that both the Council President and the Council Vice President have a higher rank than the other Council Members. For instance, according to Section 6.06 of the Jacksonville Code of Ordinances, in the event a vacancy in the office of the Mayor should occur, the President of Council shall serve as Mayor until a successor Mayor is qualified and elected, and, if there is no President of Council, then the Vice President shall so serve. Furthermore, according to Section 6.08 of the Jacksonville Code of Ordinances, during any absence of the Mayor from Duval County, the President of the Council shall automatically become acting Mayor. If the Mayor and the President of the Council are

[3] Prior to the 1989 transfer of the anti-nepotism law to the Code of Ethics for Public Officers and Employees, the provision (which at the time was codified in Section 116.111, Florida Statutes) was interpreted by a number of opinions by the Attorney General whose reasoning, in large degree, has been adopted by the Commission on Ethics. See CEO 98-7. Accordingly, in addition to advisory opinions issued by the Commission, this analysis also cites to opinions of the Attorney General's Office, which are available at myfloridalegal.com/opinions.

simultaneously absent from Duval County, the Vice President of the Council shall automatically become acting Mayor with the same powers as the President of the Council would have had in like circumstances.

Therefore, if the City Council Member's father were to be elected as President of the Council or Vice President of the Council, this would constitute his collegial body, of which the Council Member is also a member, appointing him to a position of higher rank, dignity, and importance, placing the City Council Member in violation of the anti-nepotism provision. It is important to note that even if the Council Member abstained from voting for his father to one of those roles and did not advocate for his father's advancement, he would still be in violation of the statute if his father became Council President or Vice President. As the Florida Legislature ensured in 1994, Section 112.3135 explicitly states that 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 is made by a collegial body of which a relative of the individual is a member.*

As a principle of statutory construction, penal statutes such as Section 112.3135, must be strictly construed. See CEOs 21-9, 19-12, and 18-17. See also City of Miami Beach v. Galbut, 626 So. 2d 192, 194 (Fla. 1993). Strict construction allows those covered by a statute to have clear notice of what it proscribes, and it also ensures the Commission does not usurp the role of the Legislature by impermissibly broadening a law or enlarging the terms used in the law. The Commission acknowledges there are many exceptions written into the anti-nepotism prohibition. For instance, Section 112.3135(3) provides that an agency may prescribe regulations authorizing the temporary employment, in the event of an emergency, of individuals whose employment would otherwise be prohibited by the anti-nepotism prohibition. See also Section 112.3135(1)(a)1.

(excepting institutions under the jurisdiction of the Board of Governors of the State University System from the definition of the term "agency" for purposes of the prohibition), Section 112.3135(2)(a) (creating an exception for appointments to boards other than those with land-planning or zoning responsibilities in municipalities with less than 35,000 people and creating an exception for persons serving in a volunteer capacity who provide emergency medical, firefighting, or police services), and Section 112.3135(4) (stating that State Legislators' relatives may be employed as pages or messengers during legislative sessions). However, none of these exceptions carved out by the State Legislature seem to be applicable to the instant inquiry. Under the principle of *expressio unius, exclusio alterius*, no other exception may be inferred. Morris v. Seely, 541 So. 2d 659, 661 (Fla. Dist. Ct. App. 1989) (*citing* Dobbs v. Sea Isle Hotel, 56 So.2d 341 (Fla.1952)). As such, even when considering the available, explicit, exceptions under the anti-nepotism provision, the Council Member will violate the anti-nepotism statute if his father becomes the Council President or Vice President of the Jacksonville City Council.

Your inquiry makes a case for applying Section 112.316, Florida Statutes, to negate the application of the anti-nepotism statute to the Council Member. Section 112.316 states:

> Construction.—It is not the intent of this part, nor shall it be construed, to prevent any officer or employee of a state agency or county, city, or other political subdivision of the state or any legislator or legislative employee from accepting other employment or following any pursuit which does not interfere with the full and faithful discharge by such officer, employee, legislator, or legislative

> employee of his or her duties to the state or the county, city, or other political subdivision of the state involved.

We decline to apply Section 112.316 here for at least four reasons. First, we are bound to treat similar cases similarly, and there is no discernable difference between the Council Member's situation presented in Question 1 and the situation presented in In re Wanda Range (supra), where we found a violation, that would justify a departure from precedent.

Second, we have never before applied Section 112.316 to negate the application of the anti-nepotism statute. This is precisely because our charge is to apply Section 112.316 judiciously, when it serves to negate a mechanical application of the statute when the conduct at issue does not present an actual harm to the public trust. Nepotism, by its very nature, erodes that trust in government. If we were to excuse the straightforward nepotism violation presented in this scenario, we would risk harming the public trust rather than bolstering it. In other words, applying Section 112.316 to allow you to advance a relative in the manner proposed would appear to allow you to compromise "the full and faithful discharge" of your duties, which is what the language of Section 112.316 expressly precludes.

Third, the Commission has only ever applied Section 112.316 to allow a public officer or employee to accept private employment or follow a private pursuit. Section 112.311(2), Florida Statutes, presents the legislative intent for Part III, Chapter 112, Florida Statutes, and it informs our practice of applying Section 112.316. It says, "[p]ublic officials should not be denied the opportunity, available to all other citizens, to acquire and retain private economic interests except when conflicts with the responsibility of such officials to the public cannot be avoided." There is no private economic interest at issue here.

And finally, we also note that Section 112.316 is designed to allow public officials to "accept[] other employment or follow[] any pursuit" that does not interfere with their public responsibilities. In the scenario presented in Question 1, the Council Member, who is the subject of this opinion, is not pursuing any opportunity outside his current public responsibilities; it is his father that is hypothetically pursuing an opportunity.

Your question is answered accordingly.

QUESTION 2:

Would the anti-nepotism provision found in Section 112.3135, Florida Statutes, be violated were a Member of the Jacksonville City Council, whose father also is a Member of the Jacksonville City Council, to be appointed by his peers on the Council to be President or Vice President of the Council?

In your inquiry you also ask whether there are any ethical prohibitions that may be relevant in impacting the Council Member's decision to run for Council leadership himself. The Commission addressed a situation similar to this in CEO 95-12. There, in light of the then recent addition of the "collegial body" language to the anti-nepotism prohibition, the son of a County Commissioner asked if he could be re-appointed by the County Commission to serve on a County advisory board. In that instance, the Commission stated that it was of the view that the son's reappointment to the advisory board by County Commission, even where his father abstained from the vote, would contravene Section 112.3135(2)(a), Florida Statutes.

The same logic from CEO 95-12 would apply here were the Council Member himself to be appointed as either Council President or Council Vice President. We do not, however, include in our opinion here an application of Section 112.3135 to the Council Member's father because it appears you do not have standing to inquire about his compliance. See Rule 34-6.002, F.A.C.

Your question is answered accordingly.

cc: Jason Teal

JMP/aln/kjs

File 2830

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CITY OF JACKSONVILLE

December 17, 2025

VIA ELECTRONIC and U.S. MAIL

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RE: Request for Advisory Opinion

Dear Ms. Stillman and Mr. Zuilkowski:

On behalf of Jacksonville City Council member Joe Carlucci, please find attached a request for an advisory opinion from the Florida Commission on Ethics concerning application of the state nepotism laws on Jacksonville City Council leadership elections. I have discussed this matter with Steve Zuilkowski, who is familiar with the issue and is expecting this request.

Please feel free to contact me at JTeal@coj.net or 904-255-5133 if you have any questions.

Sincerely,

Jason Teal
City Council Legislative Counsel

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Application of Florida Statute Chapter 112, Part III
on Jacksonville City Council Leadership Elections

I. Standing:

The requestor is a member of the Jacksonville City Council, the 19-member, independently elected, legislative body of the City of Jacksonville. The requestor's father is also a member of the Council. The requestor is uncertain as to his rights and responsibilities as a Council member. Pursuant to Jacksonville's Charter, he has a legal duty to annually elect Council leadership in the form of the Council president and Council vice president. If either the father or the son were to run for Council leadership, what prohibitions exist under Florida Statutes Chapter 112 that may impact the son's ability to run for Council leadership or that may impact the son if the father elects to run for Council leadership?

II. Question:

Are the nepotism prohibitions of Florida Statute, Section 112.3135 violated if a member of the City of Jacksonville, City Council is elected by his peers on the collegial body to be president or vice president of the Council, when his relative is also a voting member of the collegial body?

III. Answer:

No. First, there are no prohibitions in Florida Statutes Chapter 112 that would impact the son if he were to run for Council leadership himself. He would get to seek the office, advocate for his election and vote in favor of himself for that leadership position.

Also, while a cursory review of Florida Statute § 112.3135 could lead one to conclude that it restricts public officials from appointing, employing, promoting, or advancing relatives—or advocating for such actions—in positions within the agency where they serve or exercise jurisdiction, a deeper review of the text of the rule argues otherwise. To begin, a brief review of the defined terms is in order: a "relative" includes a father and a son, and a "collegial body" covers entities like the Jacksonville City Council, where authority is shared equally among its 19 members. Furthermore, the statute explicitly states: "An individual may not be appointed, employed, promoted, or advanced in or to a position in an agency if such appointment... is made by a collegial body of which a relative of the individual is a member."

Here, the City Council elects its president and vice president annually in May for a one-year term starting July 1, which qualifies as an appointment or advancement to a leadership position within the City agency. Since both father and son are council members, the election by the body to elect either father or son as Council leaders could conceivably violate this prohibition. The statute provides no exception for peer elections, abstentions, or non-advocacy by the relative, as confirmed by amendments in response to *Galbut v. City of Miami Beach* (605 So. 2d 466, Fla. 3d DCA 1992) and Florida Commission on Ethics Opinion CEO 96-5, which prohibit such appointments even if the relative abstains. Exceptions in § 112.3135(2)(a), like those for small municipalities or volunteers, do not apply to Jacksonville (population over 35,000) or elected leadership roles.

However, the Florida Commission on Ethics should consider the following, and in doing so, issue an advisory opinion finding that no violation of Florida Statute § 112.3135 (the anti-nepotism statute) occurs in the scenario where a member of the Jacksonville City Council is elected by his

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peers to Council leadership, even though his relative is also an elected member of the same Council.

This is so based on a plain reading of the text of the statute, as well as its legislative intent, coupled with clear distinctions from prior Commission opinions and express guidance provided by the Florida Legislature in Florida Statute § 112.316. Additionally, there are constitutional considerations under both the Florida and U.S. Constitutions. The unique context of an internal, peer-elected leadership role within a single collegial body composed entirely of publicly elected officials—not an appointment or advancement to a separate agency or subordinate position – is key in contrasting the usual import of the rule.

A. Statutory Interpretation: The Election to Council Vice President Does Not Constitute an "Appointment, Promotion, or Advancement" Under § 112.3135

Florida Statute § 112.3135(2)(a) prohibits a public official from appointing, employing, promoting, or advancing a relative (including a father or son) "in or to a position in an agency" where the official serves or exercises jurisdiction. It further bars such actions when made by a "collegial body" of which a relative is a member. However, pursuant to the guidance provided in Florida Statute § 112.316, this language must be interpreted narrowly to avoid overbroad application that disrupts the internal democratic functions of elected bodies and the "full and faithful discharge" by the Council members of their legislative duties to the City of Jacksonville.

- **Not a Separate "Position in an Agency"**: The Jacksonville City Council operates as a single collegial body under the city's consolidated charter (Jacksonville Ordinance Code, Chapter 5), where all members are equals, publicly elected to identical council seats. The Council leadership is elected annually from among these peers, but it entails no new employment, no additional staff authority, and no transfer to another agency. The Council members are duty-bound by law to vote for their leadership each year. Such annual, one-year term leadership roles is not an elevation of one Council member's statutorily defined obligations and status over others, but a "first" among equals to guide the collegial body through the subsequent Council year of agendas, meetings, action items and budgetary decisions. It is merely an annual, internal designation, akin to rotating chairmanships in committees—not a permanent "promotion" or "advancement" to a different role. Once the Council president or vice president has served their year, they revert back to being a "regular" Council member. Courts have emphasized that statutes like this should be construed strictly against expanding government restrictions (see, e.g., general principles in *State v. Warren*, 558 So. 2d 55 (Fla. 1990), affirming narrow interpretation of ethics laws). While Commission opinions often opine on potential violations in collegial body actions (e.g., CEO 13-7 on elevating a relative to full-time employment; CEO 90-58 on advisory boards), none directly address internal peer-election leadership among duly-elected officials. These opinions involve hierarchical advancements or external appointments, where the relative gains new authority or benefits. In contrast, Council leadership elections are a temporary, rotational role without such gains, making it distinguishable. The Commission should opine narrowly, as it has in cases like CEO 19-24 (salary increases for relatives), limiting application to clear favoritism risks.

- **Distinction from External Appointments**: Florida Statute § 112.3135's collegial body clause is aimed at preventing the body from appointing relatives to external or subordinate

positions (e.g., advisory boards, other boards within their jurisdiction or staff roles), where favoritism could undermine merit-based selection. Here, the election is wholly internal, among members already vetted and elected by the public. It does not "advance" the father or son "to" a position in the agency because they are already in the agency via public election. Interpreting it otherwise would absurdly imply that any internal vote assigning tasks (e.g., committee assignments) could trigger nepotism violations if relatives serve together—a result not supported by the statute's text or purpose.

- **No "Advocacy" or Control by the Relative**: Even if the father's membership on the Council triggers scrutiny, the statute requires advocacy or action by the official. In a 19-member council, each relative's single vote (or abstention) does not control the outcome, and the election reflects the collective will of peers. This dilutes any notion of nepotistic influence, distinguishing it from scenarios where a relative has direct hiring authority.

B. Legislative Intent: The Statute Targets Favoritism in Hiring and Subordinate Roles, Not Democratic Leadership Selection Among Elected Peers

The anti-nepotism law was enacted to promote public trust by preventing officials from using their positions to favor relatives in employment or appointments that bypass public accountability (*see* legislative history from Ch. 74-177, Laws of Fla., emphasizing "abuse of public office"). It is not intended to interfere with the internal governance of elected collegial bodies, where all members (including relatives) have been independently chosen by voters and in which all members have individual voting power equal in weight to that of the other Council members.

- **Context of Amendments**: The 1993 amendment post-*Galbut v. City of Miami Beach* (605 So. 2d 466 (Fla. 3d DCA 1992)) closed a loophole allowing abstention in appointments to advisory boards, but that case involved external appointments, not internal leadership. Commission opinions like CEO 96-5 (prohibiting appointment of a commissioner's husband to an advisory board) and CEO 09-15 (advisory board nominations) consistently address subordinate or external roles, not peer-elected leadership within the same body. Extending these to internal elections would exceed legislative intent, potentially chilling family participation in public service—a concern not addressed in the statute's history.

- **Municipal Context**: Jacksonville's charter was adopted as a state law by the Florida Legislature, most recently in Laws of Florida, ch. 92-341. Jacksonville's charter (Art. 5, Sec. 5.07) mandates peer election of council officers, reflecting local democratic norms. Jacksonville's charter (Art. 5, sec. 5.08) also establishes that the Council shall determine its own rules and shall annually select a president and vice president "from its members". Applying § 112.3135 here would create a conflict with home rule principles, as the statute provides exceptions for small municipalities (under 35,000 population) but none for larger ones like Jacksonville—yet it does not explicitly override charter-based internal processes. Furthermore, an interpretation of § 112.3135 to not allow the father or son to run for a Council leadership position while the other relative remains a Council member would impermissibly restrict the eligible pool of Council members available for leadership, as directed by the Council's charter mandate.

C. Impact of Sec. 112.316 Construction, Florida Statutes

Guidance regarding interpretation and application of § 112.3135 is readily found in § 112.316.

which prohibits construction of Chapter 112, Part III in such a manner as to prevent any officer from following any pursuit which does not interfere with the full and faithful discharge by such officer of his or her duties to the city. As mentioned above, the Jacksonville City Council is a 19-member body elected by the qualified voters of Duval County to perform all legislative actions for the city. While case law interpreting § 112.316 has largely focused on its application in the realm of non-government employment outside the duties of the public official, the precise language of § 112.316 makes it applicable to both "accepting other employment **or following any pursuit . . .** ", making its application broader than traditional employment opportunities. The Legislature's intent is simple to understand – so long as other pursuits sought by the public official do not interfere with the full and faithful discharge of such official's public duties, interpretations of Part III must not prevent such pursuits. "Pursuit" is not defined in Part III but it is clearly separate from, and in addition to, "employment".

An interpretation of § 112.3135 to prohibit an individual from serving on the Council while his relative is independently elected as Council president or vice president violates § 112.316. Not only does it prohibit the non-office-seeking relative from voting for the candidate of his choice, it also interferes with the ability of the other 18 Council members from being able to vote on the candidate of their choice without creating a violation. That interpretation effectively eliminates from Council leadership consideration two of its otherwise eligible members.

Each Council member has a duty, once per year, to elect the Council's leadership from within its membership. While the current composition of the Council only contains 2 relatives, expanding the problem to a nearly-absurd (but still legally permissible) possibility, if all 19 Council members were relatives, this interpretation of § 112.3135 would deprive the Council of all leadership. Application of § 112.3135 to prohibit the potentially best candidate available for Council leadership from being elected would interfere with the full and faithful discharge of both the relatives and the other Council members of their duties to the City and its electorate.

The application of Section 112.316 in this circumstance is wholly appropriate and precisely what this particular statute was designed to alleviate – avoidance of a hyper-technical reading of the rule which results in an absurd outcome achieving no ethical or moral outcome. The nepotism rules were intended for a variety of relative-related decision-making actions which result in pecuniary gain or loss for a family member, not the prohibition of a duly-elected collegial body seeking to place a person of its choice in a transitory parliamentary chairperson position for a fixed time period, as it rotates to the next peer-selected one, each year.

D. Florida Constitutional Issues: Home Rule and Equal Protection

- **Municipal Home Rule (Fla. Const. Art. VIII, § 2(b))**: Florida's Constitution grants chartered municipalities like Jacksonville broad authority to govern internal affairs, including Council organization, unless preempted by general law. Section 112.3135 does not expressly preempt charter provisions for electing officers (Jacksonville Charter, Art. 5), and applying it here would unconstitutionally intrude on local self-governance. Courts have invalidated state overreach in similar contexts (e.g., *City of Miami Beach v. Fleetwood Hotel*, 261 So. 2d 801 (Fla. 1972), protecting home rule from implicit preemptions).

Equal Protection and Basic Rights (Fla. Const. Art. I, §§ 2, 9): The statute, as applied, discriminates against Council members based solely on familial relationships, without a substantial relation to preventing corruption. Both father and son were independently elected by voters, who presumably knew of their relation. Barring the two from leadership eligibility creates an arbitrary classification, violating equal protection by disqualifying qualified individuals without due process. This could deter families from running for office, undermining the right to seek public service.

E. Federal Constitutional Arguments: Equal Protection, Due Process, and First Amendment

- **Equal Protection Clause (U.S. Const. Amend. XIV)**: Nepotism laws are generally constitutional when rationally related to anti-corruption goals (see *Kotcher v. Rosa & Sullivan Appliance Ctr.*, 957 F.2d 59 (2d Cir. 1992)), but application here lacks rationality. It treats similarly situated Council members differently based on family ties, without evidence of heightened corruption risk in peer-elected leadership. Federal courts have struck down overbroad restrictions on public officials' rights (e.g., *Clements v. Fashing*, 457 U.S. 957 (1982), invalidating barriers to office-holding).
- **Due Process Clause (U.S. Const. Amend. XIV)**: The statute is unconstitutionally vague as applied, failing to provide fair notice that an internal peer election constitutes "advancement." Public officials deserve clarity in ethics laws to avoid arbitrary enforcement.
- **First Amendment (U.S. Const. Amend. I)**: Council members' votes in leadership elections are protected political expression and association. Prohibiting the election due to a relative's presence burdens this right without compelling justification, as the process is transparent and accountable to voters (see *Republican Party of Minn. v. White*, 536 U.S. 765 (2002), protecting political speech elections).

IV. Conclusion:

The requester respectfully requests that for all these reasons, the Commission issue an advisory opinion that § 112.3135 is not violated in this instance, as the election of Council leadership represents an internal democratic function among publicly elected equals, not the type of favoritism the statute targets. This interpretation preserves legislative intent, is consistent with § 112.316, avoids absurd results, and upholds constitutional principles. If applied otherwise, it risks unconstitutional interference with local governance and individual rights, potentially leading to judicial challenge. The Commission has authority to provide such guidance under § 112.322(3)(a), promoting ethical clarity without overregulation.

Naomi, Amelia

From: Teal, Jason - CCSS <JTeal@coj.net>
Sent: Monday, December 29, 2025 12:25 PM
To: Naomi, Amelia
Cc: Steverson, Kathryn
Subject: RE: RE: Your ethics opinion

Hi Amelia,

While the Council President receives a higher salary, the Council Vice President does not. So, the Council VP makes the same as the other Council members.

Let me know if you have additional questions.

Thanks,

Jason

From: Naomi, Amelia <NAOMI.AMELIA@leg.state.fl.us>
Sent: Monday, December 29, 2025 12:22 PM
To: Teal, Jason - CCSS <JTeal@coj.net>
Cc: Steverson, Kathryn <STEVERSON.KATHRYN@leg.state.fl.us>
Subject: RE: RE: Your ethics opinion

Mr. Teal,

I hope you are well. I did have one follow-up question for you:

I reviewed Chapter 129 of Jacksonville's Ordinance Code and it appears that the Council President receives a greater salary than the other Council Members. However, I could not find anything regarding the Vice President. Does the Vice president make the same salary as the other Council Members?

Best,
Amelia Naomi

From: Naomi, Amelia
Sent: Thursday, December 18, 2025 2:39 PM
To: 'JTeal@coj.net' <JTeal@coj.net>
Cc: Steverson, Kathryn <STEVERSON.KATHRYN@leg.state.fl.us>
Subject: RE: Your ethics opinion

Mr. Teal,

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My name is Amelia Naomi and I am the attorney who has been assigned to the advisory opinion you recently requested. I will be in touch with you regarding any follow-up questions I may have as I begin to draft the opinion.

Best,

Amelia L. Naomi
Attorney
Florida Commission on Ethics
NAOMI.AMELIA@leg.state.fl.us
Telephone: 850-488-7864 | Fax: 850-488-3077

Section 6.06. - Vacancy in the office of mayor.

If the mayor should die, resign, or remove his residence from Duval County during his term of office, or be removed from office, the office of mayor shall become vacant. A vacancy in the office of mayor shall be filled in the following manner:

(a) An incumbent mayor who resigns in order to seek a state or federal office in the general statewide election held in November immediately preceding the last year of his term, shall submit his resignation at least 10 days prior to the first day of the qualifying period for the office to which he seeks election and his resignation shall be effective no later than the date on which the general statewide election is held. A vacancy in the office of mayor shall exist as of the effective date of the resignation. In the event a mayor's resignation should be effective before the date of the general statewide election, then the vacancy in the office of mayor shall be temporarily filled in the following succession. The president of council, the vice president of council, the chairman of the council committee on rules, and the chairman of the council committee on finance are established as successors to the office of mayor for the purpose of filling a vacancy in the office. In the event a vacancy should occur, the president of council shall serve as mayor until a successor mayor is qualified and elected, and, if there is no president of council, then the vice president shall so serve. If there is no vice president, then the chairman of the council committee on rules shall serve, and, if there is no chairman of the council committee on rules, then the chairman of the council committee on finance shall serve. If none of these successors can serve as acting mayor, the council shall by ordinance designate an acting mayor until the office of mayor shall be filled as provided herein. If any elected official in the line of succession should refuse to serve as acting mayor or if any such official who is serving as acting mayor should qualify to run for the office of mayor, then he shall no longer serve as acting mayor and the official next in line of succession shall assume the duties of acting mayor. A candidate seeking election to fill the vacancy created by this resignation of an incumbent mayor seeking other elected office shall qualify to run in a special mayoral election to be held as part of and at the same time as the general statewide election. The time period during which such candidates may qualify to run in this special mayoral election shall commence at the same time as does the qualifying period for candidates seeking office in the general statewide election and shall terminate on noon of the seventh day following the date on which the qualifying period for the general statewide election ends. A mayor elected to fill an unexpired term shall take office and assume and exercise all duties of office immediately as of the date of certification of the election returns by the supervisor of elections as provided by law.

(b)

18

In the event that a vacancy in the office of mayor occurs other than as provided in subsection (a), then such a vacancy shall be filled for the remainder of the unexpired term by election of a mayor at a special election to be called pursuant to resolution of the city council and held on a date no sooner than 1 month and no later than 6 months after the vacancy occurs. This special election shall, if possible, be held in conjunction with any other election scheduled to be held within the county. A resignation by the mayor shall be submitted to the supervisor of elections (with a copy to the secretary of the city council), shall specify the date on which it is effective, and shall be irrevocable. If a mayor submits a resignation which is effective at a date later than that on which it is submitted, the city council may, by resolution, call a special election for the election of a successor, this special election to be held on a date not less than 1 month after the date the resignation is submitted nor more than 6 months prior to the date the resignation is effective; and such special election shall, if possible, be held in conjunction with any other election scheduled to be held within the county. A vacancy in the office of mayor occurring as contemplated in this subsection shall be temporarily filled in the same manner established in subsection (a). The acting mayor shall exercise all the powers of the office of mayor until a successor mayor is qualified, elected, and assumes office. If an acting mayor should qualify to run for the office of mayor at this special election, then he shall no longer serve as acting mayor and the official next in line of succession shall assume the duties of acting mayor. Should a special mayoral election not be held at the same time as any other election scheduled to be held within the county, then the special primary election for nominations of candidates of political parties for the office of mayor to be voted upon in the special election shall be held at the times specified by the council in the resolution calling the special mayoral election, provided that at least 2 weeks shall intervene between the dates set for the first and second primary elections and at least 2 weeks shall intervene between the second special primary election and the special mayoral election. The time period during which candidates may qualify to run in the special primary elections and special mayoral elections shall be specified by the council in the resolution calling the special election, provided that at least 7 calendar days shall be fixed for the qualifying period and that the last date on which candidates may qualify shall occur not less than 3 weeks before the date of the first special primary election.

(Laws of Fla., Ch. 77-576; Ord. 84-1307-754, § 4; Laws of Fla., Ch. 85-433, § 1; Laws of Fla., Ch. 92-341, § 1)

Note— At the City's direction, "President pro tempore" was changed to "Vice President."

Section 6.08. - Mayor's absence, incapacity or suspension.

During any absence of the mayor from Duval County, the president of the council shall automatically become acting mayor, with emergency powers to act only when the public interest requires and with such additional powers to act only when the public interest requires and with such additional powers as the mayor may designate. If the mayor becomes incapable of acting as the mayor and incapable of delegating his duties, or in the event that the mayor is suspended in the exercise of his office, and in either case as long as the incapacity or suspension lasts, the president of the council shall automatically become acting mayor, with all the powers of the office. If the mayor and the president of the council are simultaneously absent

from Duval County, or simultaneously incapable of acting as mayor and incapable of delegating the duties of the office of mayor, or simultaneously suspended in the exercise of the office of mayor, the vice president of the council shall automatically become acting mayor with the same powers as the president of the council would have had in like circumstances. The council may by ordinance provide for further succession to the same powers as provided in this section.

(Laws of Fla., Ch. 70-748; Laws of Fla., Ch. 77-576; Ord. 84-1307-754, § 4; Laws of Fla., Ch. 92-341, § 1)

Note— At the City's direction, "President pro tempore" was changed to "Vice President."

State of Florida
COMMISSION ON ETHICS
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January 29, 2020

The Honorable Ron DeSantis
Governor, State of Florida
The Capitol, 400 S. Monroe St.
Tallahassee, Florida 32399-0001

Re: Complaint Nos. 17-113, 17-127, 18-034, 18-076, and 18-080, In re WANDA RANGE

Dear Governor DeSantis:

The Florida Commission on Ethics has completed a full and final investigation of a complaint involving Wanda Range, a former Mayor and former member of the City Council for the City of Midway. Pursuant to Section 112.324(8), Florida Statutes, we are reporting our findings and recommending appropriate disciplinary action to you in this case. Enclosed are copies of our final order and of our file in this matter. As we have found pursuant to a Recommended Order of an Administrative Law Judge of the Division of Administrative Hearings that Ms. Range violated the Code of Ethics in the manner described by our order, we recommend that you impose a civil penalty upon her in the amount of $1,500 (one thousand five hundred dollars) and that you publicly censure and reprimand her. If we may be of any assistance to you in your deliberations, please do not hesitate to contact us. We would appreciate your informing us of the manner in which you dispose of this matter. For information regarding collection of the civil penalty, please contact the Office of the Attorney General, Ms. Melody A. Hadley, Assistant Attorney General.

Sincerely,

C. Christopher Anderson, III
Executive Director

CCA/sjz

Enclosures

cc: Mr. Mark Herron, Attorney for Respondent
Ms. Melody A. Hadley, Commission Advocate
Ms. Casandra Neal, Complainant
Mr. Barry L. Bonnett, Complainant
Ms. Auburn Ford, Complainant
Ms. Carolyn Russ Francis, Complainant
Mr. Ronald J. Colston, Complainant

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

In re WANDA RANGE, Respondent.	Complaint Nos. 17-113; 17-127; 18-034; 18-076; 18-080 (consolidated) DOAH Case No. 19-3176EC Final Order No. 20-001

FINAL ORDER AND PUBLIC REPORT

This matter came before the State of Florida Commission on Ethics ("Commission"), meeting in public session on January 24, 2020, on the Recommended Order ("RO") of an Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH") rendered on November 8, 2019.

Background

This matter began with the filing in 2017 and 2018 of five separate ethics complaints by Casandra Neal, Barry L. Bonnett, Auburn Ford, Carolyn Russ Francis, and Ronald J. Colston ("Complainants") against Wanda Range ("Respondent"). By orders filed October 9, 2017; October 12, 2017; April 9, 2018; and two separate orders filed on June 19, 2018, the Executive Director of the Commission on Ethics determined that the complaints were legally sufficient to indicate possible violation of the Code of Ethics and ordered Commission staff to investigate the complaints, resulting in one Report of Investigation for the consolidated complaints dated February 7, 2019.

By order rendered April 17, 2019, the Commission found probable cause to believe the Respondent violated Section 112.3135, Florida Statutes, by voting on the appointment and/or advocating for the appointment of her relative to a position within her agency and/or her agency

voting to appoint and/or advance her relative. The Commission also found probable cause to believe the Respondent violated Section 112.313(6), Florida Statutes, by using her position to appoint her relative to the position of City of Midway Mayor Pro Tem. The Commission also found probable cause to believe the Respondent violated Section 112.313(6), Florida Statutes, by using a City of Midway-owned vehicle and/or City of Midway-issued gasoline credit card for personal use. Lastly, the Commission found probable cause to believe the Respondent violated Section 112.3148(8), Florida Statutes, by failing to report the gift of the personal use of the City of Midway-owned vehicle and/or City of Midway-issued gasoline credit card.

The matter was forwarded to DOAH for assignment of an ALJ to conduct a formal hearing and prepare a recommended order. The Respondent and the Advocate filed a joint prehearing stipulation on August 5, 2019. A formal hearing was held before the ALJ on August 12, 2019. The Advocate and Respondent filed proposed recommended orders with the ALJ.

On November 8, 2019, the ALJ entered his RO finding that Respondent violated Section 112.3135, Florida Statutes, and recommending a civil penalty of $1.00 be imposed against the Respondent. The ALJ further found in the RO that the Respondent did not violate Sections 112.313(6) or 112.3148(8), Florida Statutes.

On November 25, 2019, Advocate timely submitted to the Commission her exceptions to the RO. On December 4, 2019, Respondent timely submitted her response to Advocate's exceptions to the RO. Respondent did not submit any exceptions to the RO. Both Respondent and Advocate were notified of the date, time, and place of the Commission's final consideration of this matter; and both were given the opportunity to make argument during the Commission's consideration.

Standards of Review

The agency may not reject or modify findings of fact made by an ALJ unless a review of the entire record demonstrates that the findings were not based on competent, substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law. See, e.g., Freeze v. Department of Business Regulation, 556 So. 2d 1204 (Fla. 5th DCA 1990), and Florida Department of Corrections v. Bradley, 510 So. 2d 1122 (Fla. 1st DCA 1987). "Competent, substantial evidence" has been defined by the Florida Supreme Court as such evidence as is "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusions reached." DeGroot v. Sheffield, 95 So. 2d 912, 916 (Fla. 1957).

The agency may not reweigh the evidence, may not resolve conflicts in the evidence, and may not judge the credibility of witnesses, because such evidential matters are within the sole province of the ALJ. Heifetz v. Department of Business Regulation, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985). Consequently, if the record of the DOAH proceedings discloses any competent, substantial evidence to support a finding of fact made by the ALJ, the Commission on Ethics is bound by that finding.

Under Section 120.57(1)(l), Florida Statutes, an agency may reject or modify the conclusions of law over which it has substantive jurisdiction and the interpretations of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion or interpretation and must make a finding that its substituted conclusion or interpretation is as or more reasonable than that which was rejected or modified.

An agency may accept a hearing officer's findings of fact and conclusions of law, yet still reject the recommended penalty and substitute an increased or decreased recommended penalty. Criminal Justice Standards and Training Comm'n v. Bradley, 596 So. 2d 661, 664 (Fla. 1992). Under Section 120.57(1)(l), Florida Statutes, an agency may reduce or increase the recommended penalty only upon a review of the complete record, stating with particularity the agency's reasons for reducing or increasing the recommended penalty, and citing to the record in support of its action.

Having reviewed the RO, the complete record of the proceeding, Advocate's exceptions, and Respondent's response to Advocate's exceptions, and having heard the arguments of Advocate and Respondent, the Commission on Ethics makes the following rulings, findings, conclusions, recommendation, and disposition:

Ruling on Advocate's Exceptions

1. In her first exception, Advocate takes issue with paragraph 89, pages 23-24 of the RO, which provides:

> 89. Considering the above statutory criteria, in order to establish that Respondent violated section 112.3215(2)(a), the following elements must be proved:
>
> > 1. Respondent must be a "public official" as that term is defined by Section 112.3135(1)(b), Florida Statutes.
> >
> > 2. Respondent must have appointed, employed, promoted, or advanced, or advocated 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.
> >
> > 3. The action taken by Respondent must have been taken for an individual who is a relative of the Respondent.

> 4. In the case of municipalities with less than a population of 35,000, it must be that the agency in which the Respondent is serving or over which the Respondent exercises jurisdiction or control has land planning responsibilities.

Advocate notes that the reference to Section 112.3215(2)(a) appears to be a scrivener's error and should instead be a reference Section 112.3135(2)(a), Florida Statutes. In her response to Advocate's exceptions, Respondent agreed that the reference appears to be a scrivener's error and did not object to the acceptance of Advocate's first exception.

We agree that Section 112.3135 is the statute at issue being analyzed in Paragraph 89. Therefore, we strike the citation to Section "112.3215(2)(a)," and correct the statutory citation in paragraph 89 to be Section 112.3135(2)(a). Advocate's first exception is accepted, as it makes clear the citation of the applicable law and, thus, is as, or more, reasonable than the language used in paragraph 89.

2. In her second exception, Advocate takes issue with paragraph 89, pages 23-24 of the RO, above. In particular, Advocate seeks to delete the "fourth element" the ALJ listed among the elements to be proven to establish a violation of the anti-nepotism law, Section 112.3135. As a basis for this exception, Advocate notes that the "fourth element" included by the ALJ is a reference to exemption language within Section 112.3135. Section 112.3135(2)(a) provides:

> 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. [Emphasis added.]

Advocate argues that the burden to prove the exemption rests with the party seeking the benefit of that exemption. Respondent does not object to the acceptance of this exception.

We have previously called the emphasized language in Section 112.3135(2)(a), quoted above, an "exemption" in our advisory opinions issued pursuant to Section 112.322(3), Florida Statutes. See CEO 95-12; CEO 98-22. The courts have held, in a variety of contexts, that the person seeking the benefit of an exemption has the burden to prove the exemption applies. See, e.g., Ratley v. Batchelor, 599 So. 2d 1298, 1305 (Fla. 1st DCA 1991) (vehicle operator had the burden to prove he obtained a special permit to satisfy an exemption from a general prohibition); Brock v. Westport Recovery Corp., 832 So. 2d 209, 211 (Fla. 4th DCA 2002) (debtor had the burden to prove the statutory exemption for head of household applied in a garnishment action); Florida Freedom Newspapers, Inc. v. Dempsey, 478 So. 2d 1128 (Fla. 1st DCA 1985) (government agency had the burden to prove it benefited from an exemption to the public records law). In light of this, we find that it is a more reasonable conclusion of law that, in the context of the anti-nepotism law of Section 112.3135, the burden of proving the exemption rests with the public official who seeks to benefit from the exemption. For this reason, Advocate's second exception is accepted.

3. In her third exception, the Advocate takes issue with paragraphs 117 and 118 of the RO, in which the ALJ writes:

> 117. While there was not evidence of a formal assignment of the Vehicle to Respondent, as Mayor, it was understood by the City Manager that the Vehicle was kept at Respondent's residence. Without a policy in place and considering Respondent's use of the Vehicle for City business intermittently with personal use, the Vehicle was arguably an incident of Respondent's employment as Mayor.
>
> 118. The Commission argues that the lack of a policy is not a defense to a finding of corrupt intent, and points to Respondent's ethics training and her awareness that personal use of City-paid postage would be wrong as evidence of Respondent's notice that her personal use of the Vehicle and City Fuel Card was prohibited. However, considering the City's lack of a policy regarding personal use, coupled with Respondent's official use of the Vehicle and City Fuel Card with intermittent personal use, a history of personal use of a city vehicle by a former city manager, as well as the practice of allowing the Vehicle to be kept at Respondent's home and leaving a fuel card in the Vehicle for use by Respondent and other City employees, that argument is insufficient to clearly and convincingly prove that Respondent had reasonable notice or intent that her conduct was inconsistent with the proper performance of her public duties or would be a violation of the law or code of ethics. See Blackburn.

In particular, Advocate takes exception to the implication in paragraphs 117 and 118 that an agency policy is necessary to find a violation of Section 112.313(6), Florida Statutes. In disagreement, Respondent notes that the RO does not make such an implication, given that paragraphs 117 and 118 cited many factors as evidence of the lack of notice that her personal use of the city vehicle and city fuel card was prohibited and the lack of corrupt intent, of which the lack of an agency policy was just one.

We agree with both Advocate and Respondent that the RO does not explicitly say that an agency policy is required to find as a matter of law that a public officer or employee misused their official position or property or resources in his or her trust in violation Section 112.313(6).

To the extent that such an interpretation could be gleaned from the RO, we disagree and note that an agency policy is not necessary as a matter of law to find a violation of Section 112.313(6). We note that such a violation could be established with clear and convincing evidence where the public officer or employee is on notice, express or constructive, of the expectations held for the his or her public position, even in the absence of an explicit agency policy prohibiting the subject conduct.

In this case, where the RO considers several factors in paragraphs 117 and 118 that lead the ALJ to conclude "that it is insufficient to clearly and convincingly prove that Respondent had reasonable notice or intent that her conduct was inconsistent with the proper performance of her public duties or would be a violation of the law or code of ethics," while stating our view of the law, above, we do not disturb the factual (evidential) findings of paragraphs 117 and 118.

4. In her fourth exception, Advocate takes issue with the implication in paragraph 127 that intermittent personal and business-related use—mixed use—renders a thing of value, as a matter of law, not a reportable gift. Respondent objects to the exception, arguing that paragraph 127 does not make such an implication. Paragraph 127 of the RO states:

> In addition to her personal use, however, the evidence also established that Respondent used the Vehicle and City Fuel Card for official business. Given Respondent's intermittent business and personal uses, the evidence was insufficient to establish continuous personal use for over a year, as argued by the Commission.

We agree with both Advocate and Respondent that the RO does not explicitly say that the mixed personal and business-related use of a thing of value, without more, would render it an unreportable gift as a matter of law. To the extent that such an interpretation could be understood from the RO, we disagree and note that a thing of value used for personal and business-related matters (mixed use) can be a reportable gift.

In this case, where the RO in paragraph 128 points to a lack of evidence to show that specific and discrete instances of personal usage of the city vehicle and city fuel card ever crossed reportable thresholds for gifts, we do not disturb the factual (evidential) findings as written in paragraph 127.

5. We now consider Advocate's fifth and sixth exceptions together. In her fifth exception, Advocate takes issue with paragraph 132 of the Penalty section in the RO. Advocate requests that all but the first sentence of paragraph 132 be stricken and not be adopted by the Commission in its final order.

In her sixth exception, Advocate takes issue with the penalty recommended in the Recommendation section of the RO. Advocate requests that the Commission increase the recommended penalty, by recommending a public censure and reprimand and a civil penalty of $1,500.

In paragraph 132, the RO states the ALJ's reasoning for the penalty:

> In this case, the only violation supported by clear and convincing evidence was Respondent's violation of the anti-nepotism provision of Section 112.3135. Proof for that violation did not require a showing that Respondent intended to violate the law. In fact, the evidence otherwise showed that Respondent received legal advice prior to her vote opining that she was permitted to vote for her cousin. While Respondent's vote technically violated the anti-nepotism provision, under the circumstances, a substantial penalty is not justified. Rather, a nominal penalty, without censure or reprimand, is appropriate.

The Recommendation section states:

> Based on the foregoing Findings of Fact and Conclusions of Law, it is:
>
> RECOMMENDED that a Final Order and Public Report be entered finding that Respondent, Wanda Range, violated section 112.3135, Florida Statutes, and recommending the imposition of a nominal civil penalty of $1.00 for that violation, and further

> finding that Respondent Wanda Range did not violate sections 112.313(6), or 112.3148(8), Florida Statutes, as alleged in the Order Finding Probable Cause.

In support of her exceptions, Advocate argues that paragraph 132 should be stricken in part because the focus on Respondent's *mens rea* is not relevant to any elements of the anti-nepotism provision. Advocate also supports her exceptions by arguing that the conclusion in paragraph 132 that "the evidence otherwise showed that Respondent received legal advice prior to her vote opining that she was permitted to vote for her cousin," when the RO actually finds in paragraph 22 that "the preponderance demonstrates that the City Attorney advised that it was not a voting conflict for relatives to vote for each other for Mayor and Mayor Pro-Tem." Additionally, Advocate argues in support of her exceptions that the RO incorrectly concludes that Respondent's lack of intent to violate the anti-nepotism provision indicates that she only "technically violated" [¶ 132, Recommended Order] the law.

In support of the specific penalties sought in her sixth exception, Advocate cites two previously-issued final orders of the Commission. In In re Sam Stevens (Final Order No. 19-030)—the respondent in that case is Respondent's (Wanda Range's) cousin and became Mayor Pro-Tem after Respondent voted for him—the Commission recommended the respondent (Sam Stevens) be issued a civil penalty of $500 and be issued a public censure and reprimand. In that case, the respondent stipulated that he violated the anti-nepotism prohibition when he, a member of the city council, voted for his cousin to become Mayor. In In re Jody Strozuk (Final Order No. 18-001), the Commission recommended the respondent be issued a civil penalty of $2,000 and be issued a public censure and reprimand. In that case, the respondent stipulated that he violated the anti-nepotism provision by hiring his son to his agency. Advocate argues that these recent precedents demonstrate that a monetary fine larger than $1.00 is justified.

Respondent opposes the fifth exception, arguing that Advocate's focus on the finding in paragraph 22 that Respondent "sought"[1] legal advice ignores the context for making that finding

[1] Despite assertions to the contrary, the record and the Recommended Order do not actually reflect that Respondent ever *sought* any legal advice on the subject of the May 4, 2017 vote—only that she *received* legal advice at the precipice of voting for her cousin to become Mayor Pro-Tem. In Respondent's Response to the Advocate's Exceptions to Recommended Order, Respondent argued:

> Exception Five focuses on Conclusion of Law 132. The Advocate seeks to strike portions that reflect the Findings of Fact that formed the basis for the Administrative Law Judge's penalty recommendation. The Advocate takes issue with conclusion that the *Respondent sought* legal advice as to whether she could vote on electing her cousin to serve as Mayor Pro-tempore. In support, she sets [*sic*] cites Findings of Fact 21 and 22. However, the Advocate ignores the entire factual predicate for the conclusion that *Respondent sought* legal advice as to whether she could vote on electing her cousin to serve Mayor Pro-tempore.

Emphasis added. The Findings of Fact in the RO, however, state:

> 18. The following month, at its May 4, 2017, meeting, the City Council considered the issue of electing a Mayor and Mayor Pro-Tem as provided by the City Charter.
>
> 19. At the meeting, *Councilman Colston asked* if it was legal for relatives to vote for each other. The minutes of the City Council for that date indicate that "Interim City Attorney Thomas explained he had heard a rumor and did research and it is legal."
>
> * * *
>
> 22. Considering the conflicting evidence, it is found that the preponderance demonstrates that the City Attorney advised that it was not a voting conflict for relatives to vote for each other for Mayor and Mayor Pro-Tem.

Emphasis added.

The RO reiterates this point in its Penalty section at paragraph 132: "Proof for that violation did not require a showing that Respondent intended to violate the law. In fact, the evidence otherwise showed that Respondent *received* legal advice prior to her vote opining that she was permitted to vote for her cousin." Emphasis added.

of fact in paragraphs 18-21. Respondent argues against the sixth exception, stating that the ALJ issued the $1.00 civil penalty after weighing the all the evidence. Respondent also argues that a nominal penalty, as applied to Respondent, is a significant penalty requiring no enlargement.

With regard to the fifth exception, we do not find that the indication in paragraph 132 of the RO that Respondent merely committed a technical violation of the anti-nepotism provision, nor the conclusion flowing from that premise—that the penalty should be nominal—to be supported by the findings in the Findings of Fact section of the RO [¶¶ 1-78, Recommended Order] or the reasoning in the Penalty section of the RO [¶¶ 130-132, Recommended Order]. Paragraph 132 begins with the observation that the elements of the anti-nepotism violation do not require a finding as to Respondent's mental state or intention and finds that the elements of the violation were proven, but nevertheless concludes that the penalty only should be nominal due to the absence of proof that Respondent intended to violate the anti-nepotism provision; the RO does not mention any other factors as justification of a nominal penalty. Where the purpose, in part, of the Code of Ethics for Public Officers and Employees, Part III of Chapter 112, Florida

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The transcript of the hearing is also consistent on this point. During Respondent's cross examination of Councilman Ronald Colston, the witness testified:

> Q: Okay. In the middle of that page, there's some minutes that I'm going to ask you about. Did you question the city attorney --
> A: Yes, I did.
> Q: -- at the city council meeting on May 4th if it was legal for relatives to vote for each other?
> A: Yes, I did.

Transcript, p. 209.

To the extent the penalty ultimately recommended in this Final Order and Public Report is mitigated by the findings of fact in paragraphs 22 and 132 of the RO, this Commission does not understand paragraphs 22 and 132 of the RO to state or imply that the Respondent *sought* the legal advice that was rendered just before the subject vote, as is written in Respondent's Response to the Advocate's Exceptions to Recommended Order.

Statutes, of which the anti-nepotism provision in Section 112.3135 is a part, is to "promot[e] the public interest and maintai[n] the respect of the people in their government" [See Section 112.311(6), Florida Statutes] and the purpose, in part, for civil penalties is, as the RO acknowledges in paragraph 131, to deter future disobedience of the law, the issuance of a merely nominal penalty—one supported only by Advocate's failure to prove a non-element of the violation—is not reasonable. To the extent that Respondent's mental state was such that she did not intend to incur a violation of the anti-nepotism provision, as evidenced by receiving the legal advice of the City Attorney about the propriety of voting for her cousin to be Mayor Pro-Tem [¶¶ 19-22, Recommended Order], we find it is more reasonable, instead, to consider it, at most, a mitigating factor, among other factors, not a legal defense, and to consider it in the context of our prior final orders.

In accord with penalties imposed in prior cases,[2] and based upon a review of the complete record, the Commission on Ethics finds that public censure and reprimand, in addition to a civil penalty of $1,500, is warranted because Respondent was a member of the City Council of the City of Midway [¶ 1, Recommended Order; Joint Prehearing Stipulation, ¶ E.1.] and, as such, was a public official as that term is defined in Section 112.3135(2)(a), Florida Statutes;

[2] In re Sam Stevens, Final Order No. 19-030 (issued June 7, 2019) (adopting the Joint Stipulation of Fact, Law, and Recommended Order entered into between the Advocate for the Commission and the Respondent where, as a City Councilmember and/or the Mayor Pro Tem for the City of Midway, Respondent violated Section 112.3135, Florida Statutes, by voting on the appointment and/or advocating for the appointment of his relative to a position within the agency and/or his collegial body voting to appoint and/or advance his relative, resulting in a $500 civil fine for the anti-nepotism violation and a public censure and reprimand) and In re Jody Storozuk, Final Order No. 18-001 (issued January 24, 2018) (adopting the Joint Stipulation of Fact, Law, and Recommended Order entered into between the Advocate for the Commission and the Respondent where, as the District Manager of the Port Malabar Holiday Park Mobile Home Park Recreation District, Respondent violated Section 112.3135(2)(a), Florida Statutes, by employing one or more of his relatives to work with the recreation district, resulting in a $2,000 civil fine for the anti-nepotism violation and a public censure and reprimand).

Respondent voted in her capacity as a City Council member to make Councilman Sam Stevens the Mayor Pro-Tem of the City of Midway on May 4, 2016 [¶ 29, Recommended Order; Transcript, p. 44]; the members of the City Council alone elect one of the members to be the Mayor Pro-Tem [¶ 5, Recommended Order; Advocate's Exhibit 9, pp. 9-10]; the Mayor is recognized as the head of city government, may take control of the police during times of grave public danger or emergency and has the power to appoint additional temporary officers and patrolmen, presides at all meetings of the City Council, and has other duties [¶ 6, Recommended Order; Transcript, pp. 37-43; Advocate's Exhibit 9, pp. 9]; the position of Mayor Pro-Tem has all the duties and powers of Mayor in the event of the Mayor's incapacity [¶ 30, Recommended Order; Advocate's Exhibit 9, pp. 10; Transcript, p. 194] and, as such, elevation of a member of the City Council to the position of Mayor Pro-Tem constitutes an appointment, promotion, or advancement to a position in City government over which Respondent, as Mayor and as a member of the City Council, exercised jurisdiction or control; Councilman Stevens was Respondent's first cousin [¶ 10, Recommended Order; Joint Prehearing Stipulation, ¶ E.4; Transcript, p. 43] and, as such, constitutes a "relative" as that term is defined in Section 112.3135(1)(d), Florida Statutes; another member of the City Council, Councilman Colston, asked whether it was legal for relatives to vote for each other [¶ 19, Recommended Order; Transcript, p. 209] and, in response, the City Attorney advised that it was not a voting conflict for relatives to vote for each other for Mayor and Mayor Pro-Tem [¶ 22, Recommended Order; Advocate's Exhibit 2, p. 1; Transcript, pp. 58-59]; the population of the City of Midway is less than 4,000 [¶ 8, Recommended Order; Respondent's Exhibit 6, p. 7 (page 6 of deposition)]; and the City Council of the City of Midway has land use and/or zoning responsibilities [¶ 9, Recommended Order; Respondent's Exhibit 6, p. 7 (page 6 of deposition); Transcript p. 193]

and, as such, appointments to or within the City Council of the City of Midway are not exempt from the anti-nepotism provisions of Section 112.3135(2)(a), Florida Statutes. Therefore, the Commission on Ethics finds that public censure and reprimand and a $1,500 civil penalty, is warranted. The Commission accepts Advocate's fifth and sixth exceptions and increases Respondent's recommended penalties to be a public censure and reprimand and a $1,500 civil penalty for Respondent's violation of Section 112.3135, Florida Statutes.

Findings of Fact

The Commission on Ethics accepts and incorporates into this Final Order and Public Report the findings of fact in the Recommended Order from the Division of Administrative Hearings.

Conclusions of Law

Except to the extent modified above in granting Advocate's exceptions, the Commission on Ethics accepts and incorporates into this Final Order and Public Report the conclusions of law in the Recommended Order from the Division of Administrative Hearings.

Disposition

Accordingly, the Commission on Ethics determines that Respondent violated Section 112.3135, Florida Statutes, and recommends that the Governor publicly censure and reprimand Respondent and impose a civil penalty of $1,500 upon Respondent.[3]

[3] And the Commission on Ethics determines that Respondent did not violate Sections 112.313(6) or 112.3148(8), Florida Statutes.

ORDERED by the State of Florida Commission on Ethics meeting in public session on January 24, 2020.

January 29, 2020
Date Rendered

Kimberly B. Rezanka
Kimberly B. Rezanka
Chair, Florida Commission on Ethics

THIS ORDER CONSTITUTES FINAL AGENCY ACTION. ANY PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER HAS THE RIGHT TO SEEK JUDICIAL REVIEW UNDER SECTION 120.68, AND SECTION 112.3241, FLORIDA STATUTES, BY FILING A NOTICE OF ADMINISTRATIVE APPEAL PURSUANT TO RULE 9.110 FLORIDA RULES OF APPELLATE PROCEDURE, WITH THE CLERK OF THE COMMISSION ON ETHICS, AT EITHER 325 JOHN KNOX ROAD, BUILDING E, SUITE 200, TALLAHASSEE, FLORIDA 32303 OR P.O. DRAWER 15709, TALLAHASSEE, FLORIDA 32317-5709; AND BY FILING A COPY OF THE NOTICE OF APPEAL ATTACHED TO WHICH IS A CONFORMED COPY OF THE ORDER DESIGNATED IN THE NOTICE OF APPEAL ACCOMPANIED BY THE APPLICABLE FILING FEES WITH THE APPROPRIATE DISTRICT COURT OF APPEAL. THE NOTICE OF ADMINISTRATIVE APPEAL MUST BE FILED WITHIN 30 DAYS OF THE DATE THIS ORDER IS RENDERED.

cc: Mr. Mark Herron, Attorney for Respondent
Ms. Melody A. Hadley, Commission Advocate
Ms. Casandra Neal, Complainant
Mr. Barry L. Bonnett, Complainant
Ms. Auburn Ford, Complainant
Ms. Carolyn Russ Francis, Complainant
Mr. Ronald J. Colston, Complainant
The Honorable James H. Peterson, III, Division of Administrative Hearings

338 So.2d 902
District Court of Appeal of Florida, First District.

R. Cary SLAUGHTER, Appellant,
v.
CITY OF JACKSONVILLE, Appellee.

No. AA—14.
|
Nov. 2, 1976.

Synopsis

A city brought complaint seeking recovery of a pay increase to an employee. Summary judgment was granted to the city by the Circuit Court, Duval County, Martin Sack, J., which ruled the pay increase to be illegal. The District Court of Appeal, McCord, J., held that as against the contention that the legislature did not intend for terms 'promotion' and 'advancement' as used in a statute to be synonymous, it was only an increase in grade which elevated an employee to higher rank or position of greater personal dignity or importance that constituted 'promotion' or 'advancement' within the statute, which concerned promotion or advancement by a public official who is a relative of the employee. A mere increase in salary, within limits fixed for pay grade in which a position was classified, did not constitute 'promotion' or 'advancement.'

Reversed.

Schlegal, Lew E., Associate Judge, dissented and filed opinion.

Attorneys and Law Firms

***903** C. Ray Greene, Jr., Greene & Greene, Jacksonville, for appellant.

Don A. Romanello, Gainesville, for appellee.

Opinion

McCORD, Judge.

Appellant, R. Cary Slaughter, appeals from a partial summary judgment entered in favor of appellee City of Jacksonville.

On October 12, 1964, Slaughter was employed by the Clerk of the Circuit Court of Duval County, his father, as Assistant Data Processing Manager where he worked continuously until he resigned July 29, 1974. His employment was covered by the Civil Service System and his salary in 1964 was $828 per month. By September 29, 1969, he was classified in grade 30, step two, at a monthly salary of $888. Each civil service grade has a minimum and maximum salary for that grade and has five steps between the minimum and maximum amount. On December 16, 1969, an executive order was issued by the Mayor of the City of Jacksonville terminating a previous moratorium on merit raises effective January 1, 1970. The executive order stated that civil service rules provided that one step merit raises may be given by administrative officials without career service board action provided no merit raise has been given to the employee within the previous 15 months. Merit raises in the Office of the Clerk of Circuit Court required approval by the Clerk, the city budget officer and the personnel manager of the City. Pursuant to this executive order, 17 employees of the Clerk's Office, including Slaughter, received merit raises. These employees represented substantially all of the employees of the office who qualified for consideration under the executive order. Slaughter's increase took him from step two to step three within grade 30, increasing his salary from $888 to $932 per month. The City's complaint was filed four days short of five years after the effective date of Slaughter's increase and approximately six months after he left the employment. By the summary judgment, the trial court ruled that the pay increase to Slaughter violated s 116.111(2), Fla.Stat., and ordered recovery by the City from Slaughter of the sum of $2,601.84 with interest of $598.56.

The pertinent statute, s 116.111(2)(a), provides as follows:

> '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 he is serving or over which he exercises jurisdiction or control and individual who is a relative of the public offical. 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.'

The foregoing statute was enacted and became law over 4 1/2 years after Slaughter was employed in the Clerk's Office, and no contention is made here that his employment was in violation of the above statute.

Slaughter contends that a mere increase in salary of an employee, if not beyond the limit fixed for the pay grade in which such a position is classified, does not constitute a promotion or advancement within the meaning of the foregoing statute. The City ***904** contends that such increase is an advancement. The statute does not favor us with a definition of the term 'advancement.' We have found little authority beyond that referred to in Opinion 070—76 of the Attorney General of Florida rendered on June 30, 1970, with regard to the meaning of promotion or advancement under the above statute. There, the Attorney General states:

> 'To 'promote' is to exalt in station, rank, or honor, according to McArdle v. City of Chicago, 172 Ill.App. 142 Webster's Seventh New Collegiate Dictionary lists 'advance' as a synonym of 'promote.' Most of the decisions are in agreement that a mere increase in the salary of an employee that is not beyond the limit fixed for the grade in which such a position is classified does not constitute a 'promotion.' See Petition for Prendergast, (192 Misc. 376,) 80 N.Y.S.2d 739; 744; and Mandle v. Brown, (5 N.Y.2d 51, 177 N.Y.S.2d 482,) 152 N.E.2d 511, 515.'

Webster's Third New International Dictionary defines advancement as the action of advancing or the state of being advanced; promotion or elevation to a higher rank or to a position of greater personal dignity or importance; furtherance or progression especially toward perfection or to a higher stage of development. Appellee correctly states that in the interpretation of the statute it will be presummed that the legislature intended every part thereof for a purpose and argues from this premise that the legislature did not intend for the terms 'promotion' and 'advancement' to be synonymous. Perhaps not, but had the legislature intended for the term 'advancement' to include a salary increase without an increase in grade, it could very easily have said so. It is our view that it is only an increase in grade which elevates an employee to a higher rank or position of greater personal dignity or importance and is an advancement or promotion.

Reversed.

BOYER, C.J., concurs.

SCHLEGEL, LEW E., Associate Judge, dissents.

SCHLEGEL, LEW E., Associate Judge (dissenting).

I respectfully dissent.

Although the record is clear that Defendant was only one of seventeen employees of the Clerk's office who received a raise pursuant to an executive order issued by the Mayor of the City of Jacksonville allowing merit raises and that Defendant's raise was approved by the City Budget office and the City personnel manager as well as Defendant's father, and I acknowledge that I am disturbed by the fact that Plaintiff waited four years, 361 days to file this action, I am unable to distinguish the definition of the verb 'advance' as given in Webster's Third New International Dictionary (1961): '9: to raise in rate: INCREASE.'

All Citations

338 So.2d 902

626 So.2d 192
Supreme Court of Florida.

CITY OF MIAMI BEACH, Petitioner,
v.
Russell GALBUT, Respondent.

No. 80780.
|
Oct. 21, 1993.

Synopsis

Member of city board of adjustment brought declaratory judgment action, seeking declaration that antinepotism statute did not preclude his reappointment, even though his father-in-law was city commissioner. The Circuit Court, Dade County, Roger A. Silver, J., determined that statute precluded member's reappointment, and member appealed. The District Court of Appeal reversed, 605 So.2d 466, and certified question as one of great public importance. On review, the Supreme Court, Kogan, J., held that Florida's antinepotism law did not prohibit reappointment of city commissioner's relative to city's board of adjustment by five-sevenths vote of city commission, so long as relative abstained from voting and in no way advocated commissioner's appointment.

Decision approved.

Procedural Posture(s): On Appeal.

Attorneys and Law Firms

***192** Laurence Feingold, City Attorney and Jean K. Olin, First Asst. City Atty., Miami Beach, for petitioner.

***193** David H. Nevel, Miami Beach, for respondent.

Philip C. Claypool, Gen. Counsel and Julia Cobb Costas, Staff Counsel, Tallahassee, amicus curiae for State of Florida Com'n on Ethics.

Opinion

KOGAN, Justice.

We have for review *Galbut v. City of Miami Beach*, 605 So.2d 466 (Fla. 3d DCA 1992), in which the court certified the following question as one of great public importance:

> WHETHER THE ANTI–NEPOTISM LAW PROHIBITS THE APPOINTMENT OF A CITY COMMISSIONER'S RELATIVE TO THE CITY'S BOARD OF ADJUSTMENT WHERE (1) APPOINTMENTS ARE MADE BY A FIVE–SEVENTHS VOTE OF THE CITY COMMISSION; (2) THE RELATED CITY COMMISSIONER ABSTAINS FROM VOTING; AND (3) THE RELATED CITY COMMISSIONER TAKES NO ACTION WHICH IN ANY WAY ADVOCATES THE APPOINTMENT OF THE RELATIVE.

Id. at 468. We have jurisdiction under Article V, section 3(b)(4) of the Florida Constitution.

Russell Galbut served on the Miami Beach Zoning Board of Adjustment for ten years. Members of this Board serve without compensation and are chosen by a five-sevenths vote of the City Commission for a one-year term. In 1991, Galbut's father-in-law, Seymour Eisenberg, was elected to the City Commission. After the election, Galbut's term on the Board expired and he sought reappointment. The City Attorney determined that section 112.3135(2)(a), Florida Statutes (1991), prohibited Galbut's reappointment. Section 112.3135(2)(a) provides:

> 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 he is serving or over which he 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.

In response to the City Attorney's conclusion, Galbut brought a declaratory action in circuit court. The court adopted a general master's report finding that the anti-nepotism law precluded Galbut's reappointment. On appeal, the district court reversed, holding that the anti-nepotism law did not preclude Galbut's reappointment by the collegial body if Galbut's father-in-law recused himself and did not in any way advocate the reappointment. The court reasoned that because there was no affirmative action by the individual public official either to make or advocate Galbut's appointment, this case did not fit within the plain language of the statute. The court also noted that due to the statute's penal nature, any doubts as to its meaning must be resolved in favor of a narrow construction. 605 So.2d at 467. For the reasons set forth below, we agree that section 112.3135(2) does not prohibit Galbut's reappointment to the Board of Adjustment.

The City of Miami Beach maintains that Florida's anti-nepotism law should be liberally construed to mean that relatives of members of appointing authorities should not be appointed by boards or commissions on which their relatives serve. The City maintains that a public official's abstention will not resolve the concerns the anti-nepotism law was designed to address.

It is well settled that where a statute is clear and unambiguous, as it is here, a court will not look behind the statute's plain language for legislative intent. *See* *In Re McCollam,* 612 So.2d 572, 573 (Fla.1993); *Holly v. Auld,* 450 So.2d 217, 219 (Fla.1984). A statute's plain and ordinary meaning must be given effect unless to do so would lead to an unreasonable or ridiculous result. 612 So.2d at 573; 450 So.2d at 219.

The plain language of the statute at issue indicates that only overt actions by a public official resulting in the appointment of ***194** that official's relative are prohibited. Section 112.3135(2)(a) provides in pertinent part:

> A public official may not *appoint ... or advocate for appointment ...* to a position in the agency ... over which he exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be appointed ... to a position in an agency if *such appointment ... has been advocated by* a public official ... exercising jurisdiction or control over the agency, who is a relative of the individual.

(Emphasis added). As the district court noted,

> [t]he statute is addressed to the individual public official and to the relative of that public official. It prohibits the public official from taking overt action to appoint a relative, either by making the appointment, or advocating the relative for appointment. Similarly, the relative may not accept the appointment if the appointment has been made or advocated by the related public official.

605 So.2d at 467.

This construction is consistent with other provisions of chapter 112. In particular, section 112.311(2), Florida Statutes (1991), provides that it is

> essential that government attract those citizens best qualified to serve. Thus, the law against conflict of interest must be so designed as not to impede unreasonably or unnecessarily the recruitment and retention by

> government of those best qualified to serve.

In a similar vein, section 112.311(4), Florida Statutes (1991), makes clear that the act was intended to protect the integrity of the government and to facilitate the recruitment and retention of qualified personnel by prescribing restrictions against conflicts of interest "without creating unnecessary barriers to public service."

Moreover, even if we were to find the anti-nepotism statute ambiguous, in light of its penal nature, [1] a strict construction would be in order. *State ex rel. Robinson v. Keefe,* 111 Fla. 701, 149 So. 638 (Fla.1933) (strictly construing predecessor to current anti-nepotism law because it was penal in nature). When a statute imposes a penalty, any doubt as to its meaning must be resolved in favor of strict construction so that those covered by the statute have clear notice of what conduct the statute proscribes. *State v. Llopis,* 257 So.2d 17, 18 (Fla.1971).

Thus, the City's position that Florida's anti-nepotism statute should be liberally interpreted for the public benefit, in accordance with past Attorney General and Ethics Commission opinions on this issue, is clearly misplaced. We acknowledge the resulting conflict with the administrative decisions cited by the City, but point out our authority to overrule agency decisions that erroneously interpret a statute. *See, e.g., Florida Indus. Comm'n v. Manpower, Inc.,* 91 So.2d 197 (Fla.1956) (although court was reluctant to interfere with the agency's interpretation of a penal statute, it overruled extensive and erroneous administrative interpretation).

Also misplaced is the City's reliance on *Morris v. Seely,* 541 So.2d 659 (Fla. 1st DCA), *review dismissed,* 548 So.2d 663 (Fla.1989), in which the First District Court of Appeal held that the anti-nepotism law precluded the promotion of a sheriff's brother employed as a deputy despite the fact that the sheriff abstained from involvement in the promotion decision. *Morris* is clearly distinguishable from the present case in that the public official in *Morris* could not completely abstain from taking part in his relative's promotion. *Id.* at 660. Although the sheriff abstained from the decision-making process, once the decision was made, the sheriff or his designee had to sign the promotion appointment. *Id.* By signing the appointment, the sheriff took *affirmative action* to promote his brother, contrary to the plain language of the anti-nepotism law. In this case, only five of the seven City Commissioners must vote in favor of Galbut to affirm his reappointment; no affirmative action by Commissioner Eisenberg is required to effectuate the reappointment.

In conclusion, consistent with the plain language of section 112.3135(2)(a), we construe Florida's anti-nepotism law so as ***195** not to create an unnecessary barrier to public service by otherwise qualified individuals, such as Galbut. [2] Accordingly, we approve the decision below, and hold that Florida's anti-nepotism law does not prohibit Galbut's reappointment by a five-sevenths vote of the city commission, so long as Galbut's city commissioner relative abstains from voting and in no way advocates the reappointment.

It is so ordered.

BARKETT, C.J., and OVERTON, McDONALD, SHAW, GRIMES and HARDING, JJ., concur.

All Citations

626 So.2d 192, 18 Fla. L. Weekly S546

Footnotes

1 *See* § 112.317, Fla.Stat. (1991).

2 Galbut served for ten years on the Board of Adjustment and is obviously well qualified for the position he seeks.

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End of Document

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541 So.2d 659
District Court of Appeal of Florida,
First District.

Michael MORRIS, Appellant,
v.
Vince SEELY, as Sheriff of Escambia County, Appellee.

No. 87–935.
|
March 9, 1989.
|
Rehearing Denied May 3, 1989.

Synopsis

Sheriff sought declaration that he did not violate antinepotism law when he promoted his brother three times. The Circuit Court, Escambia County, Woodrow M. Melvin, J., held for sheriff, and appeal was taken. The District Court of Appeal held that sheriff's promotion of his brother violated antinepotism law, even though sheriff abstained from decision making whenever his brother was considered for promotion.

Reversed and remanded.

Attorneys and Law Firms

***660** Ben R. Patterson of Patterson & Traynham, Tallahassee, for appellant.

Julius F. Parker, Jr., of Parker, Skelding, McVoy, & Labasky, Tallahassee, for appellee.

Opinion

PER CURIAM.

This cause is before us on appeal from a declaratory judgment finding that appellee Vince Seely, Sheriff of Escambia County, did not violate Florida's antinepotism law, Section 116.111, Florida Statutes, when he promoted his brother, Richard Seely, three times.

On December 16, 1986, appellee filed a complaint for declaratory relief against appellant, Michael Morris, a private citizen and resident of Escambia County. Appellee sought a declaration of the applicability of Section 116.111, Florida Statutes, to the promotions of his brother within the Escambia County Sheriff's Department and an injunction enjoining appellant from challenging and questioning the promotions and payments of salary to appellee's brother.

Appellant filed an answer and a counterclaim seeking a declaration that the promotions of appellee's brother were void ab initio and a writ of mandamus requiring appellee to demote his brother to corporal, the rank his brother held when appellee became sheriff.

The undisputed facts are as follows. Richard Seely was hired as a deputy sheriff by the Escambia County Sheriff's Department on September 25, 1968. He became an investigator (later renamed "corporal") on January 15, 1972, and was serving in that position when appellee was elected and sworn in as Sheriff of Escambia County on January 8, 1981. Appellee has held that position continuously since that time.

Appellee established a policy of abstaining from decision-making or advocacy of any kind whenever his brother was considered for a promotion. The Escambia County Civil Service Commission would submit a list of names from which one of the sheriff's majors would select the new appointee. Once the decision was made, appellee or his designee would sign the promotion appointment. Using this selection process, Richard Seely was promoted to the position of sergeant on March 19, 1981, lieutenant on June 1, 1982, and captain on January 1, 1985, a position he presently holds. Appellant does not assert that Richard Seely is unqualified under Florida law to hold that position or that he has failed to comply with any training or educational requirements of Chapter 943, Florida Statutes.

Following a nonjury trial, the court ruled that appellee had not violated the antinepotism law by the promotions of his brother.

Section 116.111(2)(a), Florida Statutes, Florida antinepotism law, restricts the power of public officials to appoint or promote relatives and provides as follows:

> 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 he is serving or over which he 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 ***661** agency, who is a relative of the individual.

The plain meaning of the above-quoted statute clearly applies to preclude the promotions in question here. [1] Appellee is a "public official" as defined by Section 116.111(1)(b), Florida Statutes, and his brother is a "relative" pursuant to Section 116.111(1)(c), Florida Statutes.

Although the Legislature has created exceptions to Section 116.111 for teachers hired by district school boards or community colleges and for the temporary employment of a relative in the event of an emergency, it has made no exception to Section 116.111 for the office of sheriff. Under the principle of expressio unius, exclusio alterius, no other exception may be inferred. *Dobbs v. Sea Isle Hotel,* 56 So.2d 341 (Fla.1952).

Accordingly, the judgment below is reversed and remanded for further proceedings consistent herewith.

ERVIN, BOOTH and WENTWORTH, JJ., concur.

All Citations

541 So.2d 659, 14 Fla. L. Weekly 632

Footnotes

1 A sheriff who appoints a relative to the position of deputy sheriff violates the antinepotism law even if: (1) the relative is serving without compensation, 1973 Op. Att'y Gen. Fla. 073–347 (September 17, 1973); and (2) the sheriff abstains from voting on such employment, 1977 Op.Att'y Gen. Fla. 077–130 (December 20, 1977), 1973 Op.Att'y Gen. Fla. 073–335 (September 12, 1973).

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