

073-444—November 28, 1973

## ANTINEPOTISM LAW

## TEMPORARY EMPLOYMENT OF OFFICIAL'S WIFE

To: Louise V. Isaacs, Clerk, Circuit Court, Stuart

Prepared by: Sharyn Smith, Assistant Attorney General

## QUESTION:

May the wife of an elected official be employed as the official's secretary while the official's regular secretary is ill or has taken a few days off for various reasons?

## SUMMARY:

The temporary employment of a relative as a substitute employee during the time the regular employee is on vacation or sick leave is violative of the Antinepotism Law §116.111, F. S. Since such circumstances do not constitute natural disasters or similar unforeseen events, a relative so employed is prohibited by statute from receiving compensation for services performed during such employment.

According to your letter, whenever the regular secretary of the elected official wishes to be absent from her regular duties, *i.e.*, vacation, sick time, etc., the official's wife fills the vacancy with the expectation of being compensated by the county. Thus far, the county has refused to compensate the wife of the official for services performed. Although not specifically mentioned, it is assumed that the official possesses the appointing or employing power.

The Antinepotism Law prohibits public officials from appointing or employing relatives to positions in agencies over which they have supervision or control; and, except as provided therein, prohibits payment to any relative employed in violation of the law. Section 116.111(4), F. S., creates a statutory exception to the act as follows:

An agency may prescribe regulations authorizing the *temporary employment, in the event of emergencies resulting from natural disasters or similar unforeseen events or circumstances*, of individuals whose employment would otherwise be prohibited by this section. (Emphasis supplied.)

Thus, although the continuing employment of the wife by the elected public official would violate the Antinepotism Law, if the employment was temporary and within the allowed exception, it would be authorized by statute. However, the circumstances outlined in your letter do not constitute emergencies resulting from natural disasters or similar unforeseen events or circumstances. It appears that a request has been made for pay on a day in which both the wife and regular secretary were working. Another request was made for two weeks' pay while the regular secretary was on annual vacation. Even though the Antinepotism Law is penal in nature and must be given a strict construction, *see State ex rel. Robinson v. Keefe*, 149 So. 638 (Fla. 1933), such circumstances do not qualify as emergencies resulting from natural disasters or similar unforeseen events or circumstances and are violative of the letter as well as the spirit of the act.