

073-351—September 19, 1973

ANTINEPOTISM LAW

**EMPLOYEE TRANSFERRED FROM COUNTY PAYROLL TO
STATE PAYROLL**

To: J. H. Guerry, Executive Director, Judicial Administration Commission,
Tallahassee

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTION:

Is it unlawful under §116.111, F. S., if a circuit judge's wife who was lawfully hired by a county commission to serve as his secretary continues to serve in such a position after the position has been transferred from the county payroll to the state payroll?

SUMMARY:

Under the Antinepotism Law, §116.111, F. S., the relative of a circuit judge who was lawfully appointed by the board of county commissioners to serve as his secretary may continue to serve as such following the transfer of such position from the county's to the state's payroll.

It appears that the employee in question was employed by the board of county commissioners on February 1, 1964, to serve as secretary to her husband, a circuit judge, and has served in that capacity continuously since that date as a county employee. Under the new system of funding the operations of the offices of circuit judges, the state will pay the cost of secretarial help for circuit judges; and the existing secretarial positions will be "grandfathered" in by transferring them from the various county payrolls to the state payroll, with all the rights and privileges of state employees. However, you state that the actual employment of the person to fill the position is the responsibility of the circuit judge himself; and it is assumed for the purpose of this opinion that the circuit judge is an "appointing officer" within the purview of the Antinepotism Law, §116.111, F. S.

The Antinepotism Law prohibits an appointing officer from appointing or employing or recommending for appointment or employment a relative in or to a position in the agency in which he is serving or over which he exercises jurisdiction or control. This law and its predecessor have been strictly construed in favor of the employment when any doubt exists as to the applicability. *See State ex rel. Robinson v. Keefe*, 149 So. 638 (Fla. 1933); and *Baillie v. Town of Medley*, 262 So.2d 696 (3 D.C.A. Fla., 1972). Prior to its amendment in 1969, the Antinepotism Law permitted an official to employ one relative; and in a letter dated June 18, 1969, my predecessor in office advised that the new law did not require the discharge of those relatives who had been lawfully employed under the old law. *Accord*: Attorney General Opinion 070-18, ruling that the law does not require the discharge of persons when a prohibited relationship comes into being after a lawful employment—as, for example, when an employee's marriage brings him within the relationship prohibited by the statute.

Here, the board of county commissioners lawfully employed the wife of the circuit court judge to serve as his secretary in 1964; and, under the opinions referred to above, she lawfully continued to serve as such after the adoption of the new Antinepotism Law in 1969 and could continue to do so were it not for the changeover from the county's to the state's payroll as of October 1, 1973. In these circumstances, and in light of the admonition of *State ex rel. Robinson v. Keefe, supra*, that an Antinepotism Law should be strictly construed, I am inclined to the view that, upon the changeover from county to state employment, existing

employees who were lawfully employed by the boards of county commissioners to serve as secretaries to circuit judges may be "grandfathered in" to state employment, just as they were "grandfathered in" following the adoption of the new Antinepotism Law in 1969, should a circuit judge desire to do so.

Accordingly, your question is answered in the negative.

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TAXATION

SALES TAX EXEMPTION FOR HOTEL CATERING TO ELDERLY PERSONS

To: J. Ed Straughn, Executive Director, Department of Revenue, Tallahassee

Prepared by: J. Kendrick Tucker, Assistant Attorney General

QUESTIONS:

1. Is a hotel which caters primarily to elderly persons, but which is not licensed either as a nursing home or as a home for the aged under §400.062, F. S., relieved, under §212.08(7) (d), F. S., of the responsibility for collecting the sales tax on the lump sum charge it makes to its occupants for rooms and meals?

2. Should your answer to question 1 be in the negative, and in the event that the hotel qualifies as an exempt facility under §212.03(7) (a) and (b), F. S., on the basis that more than 50 percent of its occupants lease or rent living accommodations thereat as their permanent or principal place of residence, may the Department of Revenue require payment of sales tax on sales of meals to such occupants by requiring a reasonable allocation of a portion of the charge for meals when the hotel makes a lump sum charge to its occupants for rooms and meals?

SUMMARY:

Under §212.08(7) (d), F. S., a hotel which caters primarily to elderly persons and is designed and operated primarily for the care of persons who are ill, aged, infirm, or dependent on special care or attention is exempt from payment of sales taxes on the lump sum charges to its occupants for rooms and meals notwithstanding the fact that the hotel is not licensed as a nursing home or a home for the aged pursuant to Ch. 400, F. S., because there is no requirement in Ch. 212, F. S., nor in any other statute that the designated facilities be licensed to be entitled to the exemption. If a hotel qualifies as an exempt facility from sales taxes on rental charges under §212.03(7) (a) in that more than 50 percent of its occupants lease or rent living accommodations as their permanent or principal place of residence and the hotel furnishes meals along with the rooms and makes a lump sum charge to its occupants for the rooms and meals, then the hotel must pay sales tax on the charges for the meals and must allocate a portion of the lump sum charges to that of meals and report such monthly to the Department of Revenue because §212.11 requires such an allocation and report.

Your first question is answered qualifiedly in the affirmative. Your second question is answered in the affirmative.

Chapter 212, F. S., in general terms provides for the imposition of a sales tax on meals served by an establishment as well as for rental of rooms. However, §212.08 grants specific exemptions in certain instances from the sales tax as imposed on the