

073-397—October 25, 1973

### ANTINEPOTISM LAW

#### CITY EMPLOYING RELATED PERSONS IN SAME DEPARTMENT

To: Frank B. Watson, Jr., City Attorney, Fort Myers

Prepared by: Sharyn Smith, Assistant Attorney General

#### QUESTION:

May a city employ the daughter of a police lieutenant as a police patrolwoman when both individuals would serve in the same police department and the patrolwoman would, at various times, be under the direct supervision of her father?

#### SUMMARY:

A city may employ the daughter of a police lieutenant as a policewoman even though the policewoman would be at times under the supervision of her father. Since neither relative possesses the power to appoint, employ, or promote, the Antinepotism Law is not violated by such employment.

The Antinepotism Law, §116.111, F. S., prohibits the employment or appointment of a relative by a public official. The statute, however, applies only to public officials who have the power to appoint, promote, or recommend for appointment or promotion, persons to public office or employment. Consistent with this interpretation, AGO 071-258 held that a department head or other official who has the appointing power and is not related to a prospective appointee may appoint such person to an office or position even though the prospective appointee is related to an existing officer or employee in the department.

An analogous situation is apparent in the instant case where the father does not possess the appointing power but is an existing employee of the department. No question is presented as to promotion or advancement of the prospective policewoman within the department.

In *State ex rel. Robinson v. Keefe*, 149 So. 638 (Fla. 1933), the court held that a similar Antinepotism Law, being penal in nature, should be strictly construed. There is nothing in §116.111, *supra*, under either a broad or narrow interpretation, that prohibits the employment of a policewoman within a department in which her father also serves as a police lieutenant.

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### LAW ENFORCEMENT OFFICERS

#### POWERS OF SPECIAL OR RESERVE POLICEMEN—COMPLIANCE WITH POLICE STANDARDS BOARD REQUIREMENTS

To: A. O. Folsom, Jr., Public Safety Director, Daytona Beach

Prepared by: George R. Georgieff, Assistant Attorney General

#### QUESTIONS:

1. May "special policemen" or "police reserve forces" continue to operate in their customary manner, including the carrying of arms and exercising power of arrest, notwithstanding applicable laws of Florida and directives of the Police Standards Board when the appointment of such special or reserve policemen is provided for in the municipal charter?

2. If the answer to question 1 is in the negative, what, if any, regulations on power of arrest are applicable under Florida law and the directives of the Police Standards Board?

**SUMMARY:**

The police reserves cannot operate in that capacity without meeting the requirements established by the Police Standards Board. Their authority to make arrests, if they have not met those requirements, is no broader than that of a private citizen.

Until the adoption by the legislature of part IV, Ch. 23, F. S., and in particular Ch. 71-125, Laws of Florida, which added to the aforementioned chapter §§23.061 (4) and 23.067 (2), part-time reserve or auxiliary police officers were not controlled by the Police Standards Board. That is to say that the training and qualification requirements authorized to be imposed by that board had no application thereto. Since that time, of course, the Police Standards Board has promulgated rules and regulations regarding part-time or auxiliary police officers. Said rules and regulations are, respectively, Rule 9A-10.07 which establishes an auxiliary recruit minimum curriculum, and Rule 9A-10 which determines the function of part-time and auxiliary police officers as well as establishing classification, qualification, and training for auxiliary police officers and for part-time police officers.

I am satisfied that it makes no difference whether one considers the Daytona Beach 100-man reserve force to be auxiliary or part-time police officers, but they must come under the aforementioned rules as well as the general requirements as set out by part IV of Ch. 23, F. S., relating to the Police Standards Board. Please understand that I do not minimize the importance of the availability of such a force to law enforcement in the Daytona Beach area. I am satisfied they are both needed and desirable when used in accordance with the laws applicable thereto.

I am taking the liberty of enclosing a copy of AGO 073-14 rendered by me regarding the general subject matter, a reading of which will prove interesting in the circumstances.

Over and above that matter, I make the following observations: I know of no reason why the Daytona Beach Police Reserves Force cannot operate as an adjunct of local law enforcement, including the carrying of arms and exercising the power of arrest, so long as its membership meets the requirements established by the Police Standards Board. To hold otherwise would be to permit them to function whenever deemed necessary by the city manager without any restraint such as that routinely imposed on full-time line law enforcement officers. In other words, the reserves would have blanket authority, while the line officers would have to meet the requirements of police standards. Accordingly, your first question is answered in the negative.

Since I have answered your initial question in the negative, it follows that the scope of authority of the Daytona Beach Police Reserves with regard to arrest and such other police functions as they may carry out is, unless each member meets the requirements of the Police Standards Board, no greater than that of a private citizen. In other words, they act at their own peril.

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**TAXATION**

**MUNICIPAL OCCUPATIONAL LICENSE TAX—VENDING  
MACHINES, BUSINESSES, OCCUPATIONS**

*To: William E. Weller, City Attorney, Cocoa Beach*

*Prepared by: Stephen E. Mitchell, Assistant Attorney General*