

Charlot Thickstun, Director
Division of Elections
Office of the Lieutenant Governor

December 21, 1990

663-91-0243

465-3600

Appointment of election
supervisors

James L. Baldwin
Assistant Attorney General

You have requested our opinion whether there is any legal bar to the appointment of a legislator's spouse to serve as a regional election supervisor. The state election code contains the following provision pertinent to your question:

It is essential that the nonpartisan nature, integrity, credibility and impartiality of the administration of elections be maintained. The director of elections and the full-time members of the director's staff may not join, support or otherwise participate in a partisan political organization, faction or activity, including but not limited to the making of political contributions. The director of elections and the full time members of the director's staff may not hold or campaign for elective office, be an officer of a political party or member or officer of a political committee, permit their name to be used, or make any contributions, in support of, or in opposition to, a candidate or a ballot proposition or question, participate in any way in a national, state or local election campaign or lobby or employ or assist a lobbyist.

AS 15.10.105(b). A statute specifically addressed to the qualifications of a regional election supervisor provides as follows:

The director may appoint as an election supervisor a person who is a qualified voter in the area over which the person has jurisdiction and who does not hold an office in a political party.

AS 15.10.110.

We conclude that the technical qualifications for office do not foreclose persons related by marriage to political candidates or officeholders from being appointed as a regional election supervisor. However, the Executive Branch Ethics Act (AS 39.52) contains provisions that may severely restrict the

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manner in which the proposed appointee may carry out his or her duties. Among other things, the Act prohibits a public officer from taking or withholding official action in order to affect a matter in which the public officer has a "personal interest." AS 39.52.120(b)(4). The term "personal interest" is defined as

an interest held or involvement by a public officer, or the officer's immediate family member . . . from which, or as a result of which, a person or organization receives a benefit.

AS 39.52.960(18). Under the Act a "benefit" includes "anything that is to a person's advantage." AS 39.52.960(3). It is clear that election to legislative office would be a "benefit" covered by the Act.

The proposed appointee may not take any action whatsoever concerning a matter that may benefit the appointee's spouse. The actions precluded may not be limited only to the spouses's election to office. For example, if a disputed election occurs and the outcome of the dispute would tip the balance in favor of the legislator-spouse's party or caucus, the potential appointee's participation may result in allegations of favoritism or unethical conduct.

If you decide to make the appointment, you should take care to define the appointee's duties so that he or she does not take or withhold official action on a matter that affects the particular campaign, election district, or any other aspect affecting the elective office of the spouse. You may take this action by delegating away responsibilities to other subordinates or assuming those potential conflicting duties yourself.

If the appointment is made, please feel free to consult with this office concerning the development of written delegations or other documents to assure that the Executive Branch Ethics Act is not violated.

JLB:tg

cc: Bruce Botelho, Asst. AG, Juneau
Max Hodel, Chief of Staff,
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