

**STATE OF TENNESSEE**  
OFFICE OF THE  
**ATTORNEY GENERAL**  
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July 7, 2005

Opinion No. 05-104

Application of Nepotism Statute

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**QUESTION**

Does Tennessee's nepotism statute prevent a secretary from continuing her employment with a district public defender if the employee's stepfather is elected public defender?

**OPINION**

No. The secretary is not a "relative" under the Tennessee State Employees Uniform Nepotism Policy Act of 1980, and therefore is not covered by the Act.

**ANALYSIS**

This opinion is limited to public defenders' offices created under Tenn. Code Ann. §§ 8-14-201, *et seq.* The public defenders' offices of Shelby County and the Metropolitan Government of Nashville and Davidson County are beyond the scope of this opinion.

You provided the following facts: A secretary has been employed with the public defender's office for the past twelve years. The secretary is the stepdaughter of an assistant public defender who may run for public defender for next term. The secretary was never adopted; she is married and she does not live in her stepfather's home.

Tenn. Code Ann. §§ 8-31-101, *et seq.*, the Tennessee State Employees Uniform Nepotism Policy Act of 1980 (Act), prohibits direct supervision by one relative of another. Tenn. Code Ann. § 8-31-103; *Sloan v. Tri-County Electric Membership Corp.*, No. M2000-01794-COA-R3-CV 2002 WL 192571, \*6 (Tenn. App., Feb. 7, 2002). The Act defines "relative" as follows:

"Relative" means a parent, foster parent, parent-in-law, child, spouse, brother, foster brother, sister, foster sister, grandparent, grandchild, son-in-law, brother-in-law, daughter-in-law, sister-in-law, or other family member who resides in the same household.

Tenn. Code Ann. § 8-31-102(2).

For the Act to apply in this factual setting, certain criteria must be satisfied. First, the secretary must be a state employee. Tenn. Code Ann. § 8-31-103. Second, the secretary must be a relative, that is, she must be one of the specifically listed classes under the statutory definition of “relative.” If she is not in a listed class, she could still be a relative if she is an “other family member who resides in the same household.”

As an employee of a public defender’s office, the secretary is a state employee. Tenn. Code Ann. § 8-14-208.<sup>1</sup> The secretary is not, however, a relative under the Act. Stepchildren are not included in the statutory definition of relative, and the secretary is not another family member residing in the stepfather’s household. Thus, the secretary is not a relative for purposes of this statute, and the election of her stepfather as public defender would not prohibit her continued employment.<sup>2</sup>

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<sup>1</sup>The personnel of a public defender system are state employees, except the employees of the Shelby County and the Metropolitan Government of Nashville and Davidson County public defenders. Tenn. Code Ann. § 8-14-209; *Op. Tenn. Att’y Gen.* 99-033.

<sup>2</sup>This conclusion is consistent with the Act’s caution that to the extent possible, the Act should not be construed to keep two or more relatives from working in the same state governmental entity. Tenn. Code Ann. § 8-31-103.