TOWN OF POMONA PARK
SPECIAL TOWN COUNCIL & PUBLIC MEETING AGENDA JULY 28, 2020 – 6:00 PM
IN TOWN HALL FOR COUNCIL ONLY AND VIA TELECONFERENCE FOR PUBLIC. Call 1-888-204-5987 Access Code is 3674654#

PLEDGE TO FLAG –

CALL MEETING TO ORDER AND WELCOME VISITORS - Please speak at full volume so everyone on the call can hear.

PUBLIC HEARING ITEMS:

Hiring of Part time, Temporary Maintenance position.

Q & A / Comments / Announcements

ADJOURN

NOTICE: If a person decides to appeal any decision made by the Town Council of Pomona Park with respect to ANY MATTER CONSIDERED AT THIS MEETING OR HEARING, they will need a record of the proceedings, and for such purpose, they may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. FL 286.0105

PLEDGE OF CIVILITY

We will be respectful of one another even when we disagree.
We will direct all comments to the issues. We will avoid personal attacks.

Florida Attorney General
Advisory Legal Opinion

Number: AGO 84-30
Date: March 28, 1984
Subject: Anti-nepotism law

Mr. Herbert Elliott
City Attorney
City of Tarpon Springs
Suite 17
101 West Court Street
Post Office Box 1575
Tarpon Springs, Florida 33589

RE: ANTINEPOTISM--Employment of granddaughter of chairman of municipal civil service board permitted

Dear Mr. Elliott:

This is in response to your request for an opinion on substantially the following question:

May the granddaughter of the chairman of the Tarpon Springs Civil Service Board be employed as a clerk-typist in the Tarpon

You state that the granddaughter has been recommended for employment by the city clerk as a clerk-typist in his office. The Civil Service Board for the City of Tarpon Springs which is chaired by her grandfather considers such recommendation by the clerk as well as the final appointment of an employee after a one year period of probation. Approval of the civil service board is required for an employee to obtain full-time employment with the city. Based upon the foregoing, you inquire whether s. 116.111, F.S., Florida's Anti-nepotism Law, prohibits such employment.

Section 116.111(2)(a), F.S., prohibits a public official, as defined in s. 116.111(1)(b), F.S., from appointing, employing, promoting, advancing or advocating for appointment, employment, promotion, or advancement in or to a position in the agency in which he serves or over which he exercises jurisdiction or control any individual who is a relative as defined in s. 116.111(1)(c), F.S. It is the relationship between the employee and the appointing public official with which the antinepotism law is concerned. As emphasized in AGO 74-255,

"The antinepotism statute was clearly not intended to prevent relatives from working together in public employment. The statute simply prohibits one who has the authority to employ, appoint, promote, advance, or recommend same from using that authority with respect to his or her own relatives."

See AGO 70-15 wherein this office stated that the members of a civil service commission were not prohibited from approving increases in pay for certain classifications of employees or approving the promotion of an employee recommended by an agency head even though the affected employees were relatives of the members of the civil service commission; this office concluded that "[t]here is a clear distinction in the act [s. 116.111, F.S.] between the appointing or employing authority and the board which reviews actions taken by such authority . . . [and] [f]or this reason, . . . the [civil service] board fails to qualify as a 'public official' under the definition prescribed by [s. 116.111, F.S.]."

The term "relative" for purposes of s. 116.111, F.S., is expressly defined in s. 116.111(1)(c) to mean "an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother or half sister." Granddaughter is not included within the definition of "relative" as set forth in s 116.111(1)(c). It is a well established rule of statutory construction that where a statute enumerates the things in which it is to operate, it is to be construed as excluding from its operation all things not expressly mentioned--"*expressio unius est exclusio alterius*." *See* Cook v. State, 381 So.2d 1368, 1369 (Fla. 1980) (statutory list of those who have authority to grant immunity should be presumed to be exclusive and any omissions to be deliberate); Thayer v. State, 335 So.2d 815, 817 (Fla. 1976); Dobbs v. Sea Isle Hotel, 56 So.2d 341, 342 (Fla. 1952); Ideal Farms Drainage Dist. v. Certain Lands, 19 So.2d 234, 239 (Fla. 1944). Moreover, this office has previously stated than an antinepotism statute, being penal in nature, must be strictly construed. *See* AGO's 70-71 and 70-15; *and see* State *ex rel.* Robinson v. Keefe, 149 So. 638 (Fla. 1933); Baillie v. Town of Medley, 262 So.2d 693 (3 D.C.A. Fla., 1972).

Thus as s. 116.111(1)(c) in defining the term "relative" fails to include the relationship of granddaughter, that relationship would appear to be excluded from the operation of the statute. The fact that a job applicant is the granddaughter of the chairman of the civil service board would not, therefore, by itself, constitute a violation of s. 116.111. *See* AGO 77-130 in which this office concluded that the relationship of "cousin-in-law" was not covered by the prohibitions of s. 116.111 since such relationship was not specifically included in s. 116.111(1)(c). *Accord* AGO 70-71.

Accordingly, I am of the opinion that the relationship of "granddaughter" is not covered by the prohibitions of s. 116.111, F.S., Florida's Antinepotism Law, and thus the granddaughter of the chairman of the civil service board may be employed in the city clerk's office.

Sincerely,

Jim Smith
Attorney General

Prepared by:

Joslyn Wilson
Assistant Attorney General

KeyCite Yellow Flag - Negative Treatment

Superseded by Statute as Stated in Kinzer v. State Com'n on Ethics, Fla.App. 3 Dist., May 10, 1995

626 So.2d 192
Supreme Court of Florida.

CITY OF MIAMI BEACH, Petitioner,
v.
Russell GALBUT, Respondent.
No. 80780.

|
Oct. 21, 1993.

Synopsis
Member of city board of adjustment brought declaratory judgment action, seeking declaration that antinepotism statute did not preclude his reappointment, even though his father-in-law was city commissioner. The Circuit Court, Dade County, Roger A. Silver, J., determined that statute precluded member's reappointment, and member appealed. The District Court of Appeal reversed, 605 So.2d 466, and certified question as one of great public importance. On review, the Supreme Court, Kogan, J., held that Florida's antinepotism law did not prohibit reappointment of city commissioner's relative to city's board of adjustment by five-sevenths vote of city commission, so long as relative abstained from voting and in no way advocated commissioner's appointment.

Decision approved.

West Headnotes (5)

[1] Statutes Plain language; plain, ordinary, common, or literal meaning

Where statute is clear and unambiguous, court will not look behind statute's plain language for legislative intent.

21 Cases that cite this headnote

[2] Statutes Plain Language; Plain, Ordinary, or Common Meaning
Statutes Relation to plain, literal, or clear meaning; ambiguity

Statute's plain and ordinary meaning must be given effect unless to do so would lead to unreasonable or ridiculous result.

13 Cases that cite this headnote

[3] Public Employment Familial relationship; nepotism

Antinepotism statute prohibits only overt actions by public official resulting in appointment of that official's relative. West's F.S.A. § 112.3135(2), (2)(a).

1 Cases that cite this headnote

[4] Statutes Liberal or strict construction; rule of lenity

When statute imposes a penalty, any doubt as to its meaning must be resolved in favor of strict construction so that those covered by statute have clear notice of what conduct statute proscribes.

4 Cases that cite this headnote

[5] Public Employment Election or appointment
Zoning and Planning Appointment or election

Florida's antinepotism law did not prohibit reappointment of city commissioner's relative to city's board of adjustment by five-sevenths vote of city commission, so long as related commissioner abstained from voting and it no way advocated his relative's reappointment. West's F.S.A. § 112.3135(2)(a).

2 Cases that cite this headnote

Attorneys and Law Firms

*192 Laurence Feingold, City Attorney and Jean K. Olin, First Asst. City Atty., Miami Beach, for petitioner.

*193 David H. Nevel, Miami Beach, for respondent.

Philip C. Claypool, Gen. Counsel and Julia Cobb Costas, Staff Counsel, Tallahassee, amicus curiae for State of Florida Com'n on Ethics.

Opinion

KOGAN, Justice.

We have for review *Galbut v. City of Miami Beach*, 605 So.2d 466 (Fla. 3d DCA 1992), in which the court certified the following question as one of great public importance:

> WHETHER THE ANTI–NEPOTISM LAW PROHIBITS THE APPOINTMENT OF A CITY COMMISSIONER'S RELATIVE TO THE CITY'S BOARD OF ADJUSTMENT WHERE (1) APPOINTMENTS ARE MADE BY A FIVE–SEVENTHS VOTE OF THE CITY COMMISSION; (2) THE RELATED CITY COMMISSIONER ABSTAINS FROM VOTING; AND (3) THE RELATED CITY COMMISSIONER TAKES NO ACTION WHICH IN ANY WAY ADVOCATES THE APPOINTMENT OF THE RELATIVE.

Id. at 468. We have jurisdiction under Article V, section 3(b)(4) of the Florida Constitution.

Russell Galbut served on the Miami Beach Zoning Board of Adjustment for ten years. Members of this Board serve without compensation and are chosen by a five-sevenths vote of the City Commission for a one-year term. In 1991, Galbut's father-in-law, Seymour Eisenberg, was elected to the City Commission. After the election, Galbut's term on the Board expired and he sought reappointment. The City Attorney determined that section 112.3135(2)(a), Florida Statutes (1991), prohibited Galbut's reappointment. Section 112.3135(2)(a) provides:

> A public official may not appoint, employ, promote, or advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the agency in which he is serving or over which he exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual.

In response to the City Attorney's conclusion, Galbut brought a declaratory action in circuit court. The court adopted a general master's report finding that the anti-nepotism law precluded Galbut's reappointment. On appeal, the district court reversed, holding that the anti-nepotism law did not preclude Galbut's reappointment by the collegial body if Galbut's father-in-law recused himself and did not in any way advocate the reappointment. The court reasoned that because there was no affirmative action by the individual public official either to make or advocate Galbut's appointment, this case did not fit within the plain language of the statute. The court also noted that due to the statute's penal nature, any doubts as to its meaning must be resolved in favor of a narrow construction. 605 So.2d at 467. For the reasons set forth below, we agree that section 112.3135(2) does not prohibit Galbut's reappointment to the Board of Adjustment.

The City of Miami Beach maintains that Florida's anti-nepotism law should be liberally construed to mean that relatives of members of appointing authorities should not be appointed by boards or

commissions on which their relatives serve. The City maintains that a public official's abstention will not resolve the concerns the anti-nepotism law was designed to address.

[1] [2] It is well settled that where a statute is clear and unambiguous, as it is here, a court will not look behind the statute's plain language for legislative intent. *See In Re McCollam,* 612 So.2d 572, 573 (Fla.1993); *Holly v. Auld,* 450 So.2d 217, 219 (Fla.1984). A statute's plain and ordinary meaning must be given effect unless to do so would lead to an unreasonable or ridiculous result. 612 So.2d at 573; 450 So.2d at 219.

[3] The plain language of the statute at issue indicates that only overt actions by a public official resulting in the appointment of *194 that official's relative are prohibited. Section 112.3135(2)(a) provides in pertinent part:

> A public official may not *appoint ... or advocate for appointment* ... to a position in the agency ... over which he exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be appointed ... to a position in an agency if *such appointment ... has been advocated by* a public official ... exercising jurisdiction or control over the agency, who is a relative of the individual.

(Emphasis added). As the district court noted,

> [t]he statute is addressed to the individual public official and to the relative of that public official. It prohibits the public official from taking overt action to appoint a relative, either by making the appointment, or advocating the relative for appointment. Similarly, the relative may not accept the appointment if the appointment has been made or advocated by the related public official.

605 So.2d at 467.

This construction is consistent with other provisions of chapter 112. In particular, section 112.311(2), Florida Statutes (1991), provides that it is

> essential that government attract those citizens best qualified to serve. Thus, the law against conflict of interest must be so designed as not to impede unreasonably or unnecessarily the recruitment and retention by government of those best qualified to serve.

In a similar vein, section 112.311(4), Florida Statutes (1991), makes clear that the act was intended to protect the integrity of the government and to facilitate the recruitment and retention of qualified personnel by prescribing restrictions against conflicts of interest "without creating unnecessary barriers to public service."

[4] Moreover, even if we were to find the anti-nepotism statute ambiguous, in light of its penal nature,[1] a strict construction would be in order. *State ex rel. Robinson v. Keefe,* 111 Fla. 701, 149 So. 638 (Fla.1933) (strictly construing predecessor to current anti-nepotism law because it was penal in nature). When a statute imposes a penalty, any doubt as to its meaning must be resolved in favor of strict construction so that those covered by the statute have clear notice of what conduct the statute proscribes. *State v. Llopis,* 257 So.2d 17, 18 (Fla.1971).

Thus, the City's position that Florida's anti-nepotism statute should be liberally interpreted for the public benefit, in accordance with past Attorney General and Ethics Commission opinions on this issue, is clearly misplaced. We acknowledge the resulting conflict with the administrative decisions cited by the City, but point out our authority to overrule agency decisions that erroneously interpret a statute. *See, e.g., Florida Indus. Comm'n v. Manpower, Inc.,* 91 So.2d 197 (Fla.1956) (although court was reluctant to interfere with the agency's interpretation of a penal statute, it overruled extensive and erroneous administrative interpretation).

Also misplaced is the City's reliance on *Morris v. Seely,* 541 So.2d 659 (Fla. 1st DCA), *review dismissed,* 548 So.2d 663 (Fla.1989), in which the First District Court of Appeal held that the anti-nepotism law precluded the promotion of a sheriff's brother employed as a deputy despite the

fact that the sheriff abstained from involvement in the promotion decision. *Morris* is clearly distinguishable from the present case in that the public official in *Morris* could not completely abstain from taking part in his relative's promotion. *Id.* at 660. Although the sheriff abstained from the decision-making process, once the decision was made, the sheriff or his designee had to sign the promotion appointment. *Id.* By signing the appointment, the sheriff took *affirmative action* to promote his brother, contrary to the plain language of the anti-nepotism law. In this case, only five of the seven City Commissioners must vote in favor of Galbut to affirm his reappointment; no affirmative action by Commissioner Eisenberg is required to effectuate the reappointment.

[5] In conclusion, consistent with the plain language of section 112.3135(2)(a), we construe Florida's anti-nepotism law so as *195 not to create an unnecessary barrier to public service by otherwise qualified individuals, such as Galbut.[2] Accordingly, we approve the decision below, and hold that Florida's anti-nepotism law does not prohibit Galbut's reappointment by a five-sevenths vote of the city commission, so long as Galbut's city commissioner relative abstains from voting and in no way advocates the reappointment.

It is so ordered.

BARKETT, C.J., and OVERTON, McDONALD, SHAW, GRIMES and HARDING, JJ., concur.

All Citations

626 So.2d 192, 18 Fla. L. Weekly S546

Footnotes

1 *See* § 112.317, Fla.Stat. (1991).

2 Galbut served for ten years on the Board of Adjustment and is obviously well qualified for the position he seeks.

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