

Pacific County PROSECUTING ATTORNEY

Mark McClain, Prosecutor

December 26, 2018

The Honorable Bob Ferguson
Attorney General of Washington
PO Box 40100
Olympia, Washington 98504-0100

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DEC 31 2018

ATTORNEY GENERAL'S OFFICE
Solicitor General's Division

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DEC 31 2018

ATTORNEY GENERAL
OF WASHINGTON

Re: Request for Attorney General Opinion

Dear Mr. Attorney General:

I am requesting an Attorney General Opinion with regards to several questions. These questions relate to the application of Chapter 42.23 RCW to an elected County Sheriff and to a County Commissioner. I will provide a brief background for each question.

1. The Sheriff-elect's spouse is currently employed as a 911 Telecommunicator with the Sheriff's office. This is a civil service classified position, pursuant to Chapter 41.14 RCW, and is also subject to a collective bargaining agreement. Pacific County Civil Service Rules provide that an employee in a classified position may only be discharged for just cause, subject to progressive discipline with an appeal to the elected sheriff and the Civil Service Board. In addition, she is a member of a union, and the Sheriff's office has a collective bargaining agreement with the union that includes an employee grievance process through the Sheriff. Finally, the Sheriff's Office has adopted a standard set of Lexipol Policies which prohibits employees from occupying a position in the line of supervision of any other employee who is a relative. A copy of the relevant Policy is attached hereto. We note the possible application of Wash. AGLO 1972 No. 47 ("From this it follows that while the sheriff might very well be restricted by the provisions of RCW 42.23.030 from employing his own wife with in the sheriff's department of his county (based upon principles of community property law)...") Hon. L. Edward Brown, Wash. AGLO 1972 No. 47. However, we also note the preliminary question of whether the position of a 911 Telecommunicator constitutes a public office, which precludes an employment contract issue altogether. See Hon. Fred A. Johnson, Wash. AGO 1996 No. 15; Robert V. Graham, Wash AGO 1978 No. 22.

Question #1 – Does the continued employment in the Sheriff's office of the Sheriff's spouse as a 911 Telecommunicator constitute a beneficial interest in a contract under the supervision of a municipal officer, in violation of RCW 42.23.030?

2. The Sheriff-elect intends to appoint his brother-in-law (his spouse's brother) to the unclassified position of Chief Civil Deputy. The Sheriff's Office Policy definition of "Relative" includes siblings. This policy prohibits employees from supervising a relative, or from participating in or contributing to assignments or other personnel decisions affecting an employee who is a relative.

Question #2 – Should the Sheriff's Office Policy regarding siblings be regarded as applying to a brother-in-law relationship?

Question #3 – If this policy applies to a brother-in-law relationship, would the Sheriff hiring his brother-in-law constitute granting a special privilege or exemption to another, in violation of RCW 42.23.070(1)?

3. A County Commissioner-elect was previously found to have violated RCW 42.23.030 for receiving direct and indirect beneficial interests in contracts made under his supervision or for the benefit of his office. He was ordered to forfeit office and pay penalties as provided by RCW 42.23.050. See City of Raymond v. Michael Runyon, Pacific County Cause No. 96-2-00324-9. This decision was affirmed by the Court of Appeals. See City of Raymond v. Michael Runyon, 93 Wash. App. 127 (1998). The trial court ordered Mr. Runyon to vacate his office. While the Court of Appeals affirmed, it did not address Mr. Runyon's continued elected service. *Id.* It appears that a finding of violation of a predecessor statute to RCW 42.23.030 was held to constitute malfeasance. See State v. Miller, 32 Wn.2d 149, 153 (1948); Rem.Rev.Stat. § 2334. However, we note the Court of Appeals in *Runyon* must have been aware that Mr. Runyon had been elected to separate public office at the time of oral argument in that case. See City of Raymond, 93 Wash. App. at 133, fn.4, and that in fact Mr. Runyon held public offices subsequent to this decision without further involvement from the Attorney General's Office. For that reason it is unclear whether it is the Attorney General's view that Mr. Runyon may permissively hold public office. See RCW 9.92.120.

Question #4 – Does a judicial finding that an individual violated RCW 42.23.030, and order to forfeit office, constitute a finding of malfeasance, such that the individual is disqualified from holding public office in this state?

4. The County Commissioner-elect continues to own the rock quarry business which was the issue in the *Runyon* case. See Runyon, 93 Wash. App. at 130-31. This rock quarry supplies rock and gravel to contractors doing business with the County. The County Commissioner-elect intends to lease the rock quarry business to his daughter while he holds office, with a business agreement that will prevent him from receiving any portion of profits derived from business with the county.¹

Question #5 – Is a business agreement by a County Commissioner leasing a business to a relative, and precluding the County Commissioner from receiving any profit from business with the County, sufficient to avoid violating RCW 42.23.030?

As these questions involve potential forfeiture of office or ineligibility to hold office, and personnel decisions may be made by the new Sheriff to avoid these issues, we request an expedited response in the form of an informal opinion as soon as is possible. Thank you for your consideration.

Sincerely,



Mark McClain
Pacific County Prosecuting Attorney

¹ Commissioner-elect Runyon explained the general nature of the agreement, but we have not seen the agreement and do not know what reversionary interests or other financial interests he may have with respect to the rock business.

Nepotism and Conflicting Relationships

1050.1 PURPOSE AND SCOPE

The purpose of this policy is to ensure equal opportunity and effective employment practices by avoiding actual or perceived favoritism, discrimination, or actual or potential conflicts of interest by or between members of this department. These employment practices include: recruiting, testing, hiring, compensation, assignment, use of facilities, access to training opportunities, supervision, performance appraisal, discipline and workplace safety and security.

1050.1.1 DEFINITIONS

Business relationship - Serving as an employee, independent contractor, compensated consultant, owner, board member, shareholder or investor in an outside business, company, partnership, corporation, venture or other transaction where the Department employee's annual interest, compensation, investment or obligation is greater than \$250.

Conflict of interest - Any actual, perceived or potential conflict of interest in which it reasonably appears that a department employee's action, inaction or decisions are or may be influenced by the employee's personal or business relationship.

Nepotism - The practice of showing favoritism to relatives in appointment, employment, promotion or advancement by any public official in a position to influence these personnel decisions.

Personal relationship - Includes marriage, cohabitation, dating or any other intimate relationship beyond mere friendship.

Public official - A supervisor, officer or employee who is vested with authority by law, rule or regulation, or to whom authority has been delegated.

Relative - An employee's parent, stepparent, spouse, domestic partner, significant other, child (natural, adopted or step), sibling or grandparent.

Subordinate - An employee who is subject to the temporary or ongoing direct or indirect authority of a supervisor.

Supervisor - An employee who has temporary or ongoing direct or indirect authority over the actions, decisions, evaluation and/or performance of a subordinate employee.

1050.2 RESTRICTED DUTIES AND ASSIGNMENTS

The Department does not prohibit all personal or business relationships between employees. However, in order to avoid nepotism or other inappropriate conflicts, the following reasonable restrictions shall apply:

- (a) Employees are prohibited from directly supervising, occupying a position in the line of supervision or being directly supervised by any other employee who is a relative or with whom they are involved in a personal or business relationship.

Pacific County Sheriff's Office

Pacific CO SO WA Policy Manual

Nepotism and Conflicting Relationships

1. If circumstances require that such a supervisor/subordinate relationship exist temporarily, the supervisor shall make every reasonable effort to defer matters pertaining to the involved employee to an uninvolved supervisor.
 2. When personnel and circumstances permit, the Department will attempt to make every reasonable effort to avoid placing employees in such supervisor/subordinate situations. The Department, however, reserves the right to transfer or reassign any employee to another position within the same classification in order to avoid conflicts with any provision of this policy.
- (b) Employees are prohibited from participating in, contributing to or recommending promotions, assignments, performance evaluations, transfers or other personnel decisions affecting an employee who is a relative or with whom they are involved in a personal or business relationship.
 - (c) Whenever possible, FTOs and other trainers will not be assigned to train relatives. FTOs and other trainers are prohibited from entering into or maintaining personal or business relationships with any employee they are assigned to train until such time as the training has been successfully completed and the employee is off probation.
 - (d) To avoid actual or perceived conflicts of interest, members of this department shall refrain from developing or maintaining personal or financial relationships with victims, witnesses or other individuals during the course of or as a direct result of any official contact.
 - (e) Except as required in the performance of official duties or, in the case of immediate relatives, employees shall not develop or maintain personal or financial relationships with any individual they know or reasonably should know is under criminal investigation, is a convicted felon, parolee, fugitive, or registered sex offender, or who engages in serious violations of state or federal laws.

1050.2.1 EMPLOYEE RESPONSIBILITY

Prior to entering into any personal or business relationship or other circumstance which the employee knows or reasonably should know could create a conflict of interest or other violation of this policy, the employee shall promptly notify his/her uninvolved, next highest level of supervisor.

Whenever any employee is placed in circumstances that would require the employee to take enforcement action or provide official information or services to any relative or individual with whom the employee is involved in a personal or business relationship, the employee shall promptly notify his/her uninvolved, immediate supervisor. In the event that no uninvolved supervisor is immediately available, the employee shall promptly notify dispatch to have another uninvolved employee either relieve the involved employee or minimally remain present to witness the action.

Pacific County Sheriff's Office

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Nepotism and Conflicting Relationships

1050.2.2 SUPERVISORS RESPONSIBILITY

Upon being notified of, or otherwise becoming aware of any circumstance that could result in or constitute an actual or potential violation of this policy, a supervisor shall take all reasonable steps to promptly mitigate or avoid such violations, whenever possible. Supervisors shall also promptly notify the Sheriff of such actual or potential violations through the chain of command.

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GAIL RATFIELD CLERK
PACIFIC COUNTY, WASH

BY [Signature] DEPUTY

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SUPERIOR COURT OF WASHINGTON FOR COUNTY OF PACIFIC

CITY OF RAYMOND, a)
Municipal Corporation,)
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Plaintiff,)
)
WASHINGTON STATE AUDITOR,)
)
Intervenor,)
)
v.)
)
MICHAEL RUNYON, Public)
Works Commissioner,)
)
Defendant.)

NO. 96-2-00324-9

ORDER GRANTING
INTERVENOR'S MOTION FOR
SUMMARY JUDGMENT

15 This matter came before the Court on May 14, 1997, on the
16 parties' Cross Motions for Summary Judgment. Intervenor State
17 Auditor requested the following relief: that this Court find, that
18 as a matter of law, Michael Runyon had a beneficial interest,
19 direct and indirect, in certain City of Raymond contracts made by,
20 through, or under his supervision as prohibited by RCW 42.23.030,
21 and must forfeit his office and pay the penalties set forth in RCW
22 42.23.050. Defendant Michael Runyon requested this Court grant
23 summary judgment of dismissal as to all claims of the plaintiff
24 city and intervenor.

25 The Court heard the oral argument of counsel for plaintiff
26 City of Raymond, Henry Chapman, counsel for intervenor State

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ORDER-1

Fax: Edwards

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1 Auditor, Christine O. Gregoire, Attorney General and Mary Jo Diaz,
2 Assistant Attorney General, and counsel for defendant Commissioner
3 Michael Runyon, David Edwards. The Court considered the pleadings
4 filed in this action, the records and files herein, the
5 Stipulation and Order as to Facts at Hearing on Cross Motions for
6 Summary Judgment, and the legal memoranda submitted by counsel in
7 support of their cross motions for summary judgment.

8 Based on the argument of counsel and the evidence presented,
9 the Court finds:

10 1. There is no genuine issue as to any material fact in this
11 cause.

12 2. Defendant Commissioner Michael Runyon has direct and
13 indirect beneficial interests in certain City of Raymond contracts
14 made by, through, or under his supervision for the benefit of his
15 office, and received compensation from an individual beneficially
16 interested in said contracts as prohibited by RCW 42.23.030.

17 3. Intervenor State Auditor is entitled to judgment as a
18 matter of law.

19 Based on the above findings, It Is ORDERED:

20 1. Intervenor State Auditor's cross motion for summary
21 judgment is granted.

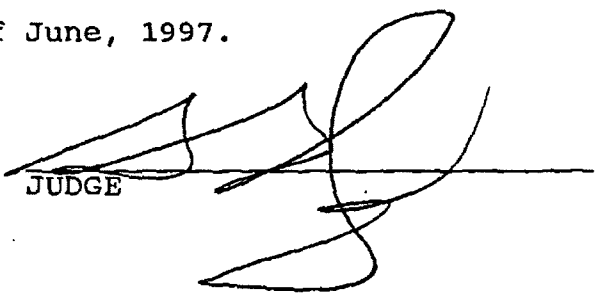
22 2. Defendant Michael Runyon's cross motion for summary
23 judgment is denied.

24 3. Defendant Michael Runyon must forfeit his office and pay
25 the penalties set forth in RCW 42.23.050.

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Dated this 11th day of June, 1997.


JUDGE

Presented by:
CHRISTINE O. GREGOIRE
Attorney General

By: Mary Jo Diaz
MARY JO DIAZ, WSBA #15534
Assistant Attorney General
Attorneys for Intervenor
State Auditor's Office

Approved as to form and notice of
presentation waived:

Henry S. Chapman
HENRY S. CHAPMAN
Attorney for City of Raymond

David L. Edwards
DAVID L. EDWARDS
Attorney for Commissioner
Michael Runyon

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