

December 30, 2002

The Honorable Pete T. Cenarrusa  
Secretary of State  
**HAND DELIVERED**

**THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE  
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE**

Dear Mr. Cenarrusa:

This guideline is in response to your recent inquiry asking: “Is the current employment of a state employee jeopardized by the subsequent election of the employee’s spouse to an office which supervises the employee?” Consistent with the longstanding position of this office, it does not appear that a current employee must be terminated because of the spouse’s election.

**1. There is no Appointment or Vote for Appointment of a Previously Employed Employee of the Secretary of State’s Office Upon Succession of Office**

Idaho Code § 18-1359 states the following:

(1) No public servant shall:

.....

(e) Appoint or vote for the appointment of any person related to him by blood or marriage within the second degree, to any clerkship, office, position, employment or duty, when the salary, wages, pay or compensation of such appointee is to be paid out of public funds or fees of office. . . .

Provided an employee is already working within the office, then there can be no appointment or vote for appointment of the employee by the elected official. The situation regarding the appointment of employees is expressly considered within the Idaho Code. For example, according to Idaho Code § 67-1401(13), the Attorney General is expressly empowered to appoint deputies and staff. No similar authority is expressly granted to the Secretary of State.

The interpretation of these provisions indicates that an employee within the Secretary of State’s office is not hired or re-hired with a transition in office by the elected official. The employee spouse is not being appointed to a position of employment by the elected official. Rather, the spouse is merely continuing in a position she already holds. The prohibition found in Idaho Code § 18-1359 does not apply unless the elected official attempts to promote or appoint the employee spouse to a new position.

## 2. **Current Employment is not Jeopardized by the Subsequent Election of a Spouse**

As you are aware, within the last legislative session, the legislature passed S1422 to amend Idaho Code § 18-1359, permitting an employee of a governmental entity to retain his or her position when the spouse is elected as a local government official. Although the amendment appears directed at local government, it reflects a statutory endorsement of this office's broader opinion as reflected within the *Idaho Ethics In Government Manual* and specifically discussed in the nepotism section in Question No. 5.

**Question No. 5:** Is the current employment of a public employee jeopardized by the subsequent election of a relative to a public office which has supervisory authority over that employee?

**Answer:** Idaho Code § 18-1359 sets forth the nepotism policy of the state of Idaho. The Attorney General's Office has taken the position that *existing* public employment will not be jeopardized by the *subsequent* election of a relative of that employee to public office.

Election of an employee's spouse to a supervisory public office should not result in the termination of the current employee.

Although not addressed within this question, an ancillary issue necessarily arising from this question regards promotion and pay increases for the current employee following election of the spouse. The Idaho Ethics In Government Manual also addresses this issue.

According to the answer to Question No. 6, the employee will be frozen in his or her current job assignment but may be eligible to receive non-meritorious pay increases. In other words, if everyone in the office is receiving a 2% pay increase, then the employee of the spouse may also be entitled to receive a 2% pay increase. No promotion, advancement, or bonus is authorized.

I hope that you find this guideline helpful. If you have any questions regarding this guidance or any related issue, please contact me.

Sincerely,

BRIAN P. KANE  
Deputy Attorney General  
Intergovernmental & Fiscal Law Division