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SPRINGFIELD

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FILE NO. 80-035

**GOVERNMENTAL ETHICS AND
CONFLICT OF INTEREST:
Employment of School Board
Member's Spouse as Teacher**

Honorable Fred R. Odendahl
State's Attorney
Warren County
Court House
Monmouth, Illinois 61462

Dear Mr. Odendahl:

I have your letter wherein you inquire whether a conflict of interest arises when the spouse of a member of a school board is hired to be a teacher in the school district governed by the board of which his or her spouse is a member. For the reasons hereinafter stated, it is my opinion that a per se conflict of interest does not exist in that situation.

As you are aware, section 3 of "AN ACT to prevent fraudulent and corrupt practices in the making or accepting of official appointments and contracts by public officers"

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[Corrupt Practices Act] (Ill. Rev. Stat. 1979, ch. 102, par. 3) provides in pertinent part that:

"(a) No person holding any office, either by election or appointment under the laws or constitution of this state, may be in any manner interested, either directly or indirectly, in his own name or in the name of any other person, association, trust or corporation, in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote. No such officer may represent, either as agent or otherwise, any person, association, trust or corporation, with respect to any application or bid for any contract or work in regard to which such officer may be called upon to vote. Nor may any such officer take or receive, or offer to take or receive, either directly or indirectly, any money or other thing of value as a gift or bribe or means of influencing his vote or action in his official character. Any contract made and procured in violation hereof is void.

* * *

(Emphasis added.)

The question of whether violation of the Corrupt Practices Act exists as a result of the situation you have described has been specifically addressed by the Appellate Court of Illinois in the case of Hollister v. North (1977), 50 Ill. App. 3d 56, 60. In addressing the question, the court affirmed the judgment of the trial court that the fact of marital relationship, in itself, does not give rise to an interest in a contract within the meaning of the Corrupt Practices Act. According to the court, this result was required because a husband, as a matter of law, has no interest in his wife's contracts, and because the legislature would have specifically prohibited this type of interest, as it has done elsewhere, if it had so intended. Moreover,

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the Hollister court, at page 59, stated that:

" In People v. Simpkins (1977), 45 Ill. App. 3d 202, 359 N.E. 828, the fifth district was faced with a similar problem involving conflict of interest and the marital relationship. The court in Simpkins discusses many of the cases which have been cited to us. As that court stated:

'We think none of these cases weakens the general rule that the wife's interest is not necessarily the husband's interest, provided the contract is not a mere subterfuge for his own pecuniary interest. * * * The rule remains that "the interest in a contract which disqualifies a public officer from executing such a contract in his official capacity * * * must be certain, definable, pecuniary, or proprietary." (Panozzo v. City of Rockford, 306 Ill. App. 443, 456, 28 N.E.2d 748, [754] (2d Dist. 1940); L. Ancel, Municipal Contracts, 1961 U. Ill. L.F. at 370, 373.)' People v. Simpkins, 45 Ill. App. 3d 202, 208, 359 N.E.2d 828, 832." (Emphasis added.)

The court in Simpkins, as indicated above, did acknowledge that the general rule stated therein applies only absent subterfuge disguising an actual pecuniary interest. People v. Simpkins (1977), 45 Ill. App. 3d 202, 208.

As you have pointed out, Attorney General Scott advised in opinion No. S-1080, issued April 30, 1976, that a conflict of interest within the meaning of section 3 of the Corrupt Practices Act did exist where a member of a school board is married to a teacher in the school district governed by the board of which he is a member. That determination was based primarily on the holding of Bock v. Long (1972), 3 Ill. App. 3d 691, 693-694, and language found

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therein. The court in Bock held that the operation of a dramshop by the spouse of a law enforcing public official gave such official a pecuniary interest in the sale of liquor in violation of subsection 2(14) of article VI of "AN ACT relating to alcoholic liquors" (Ill. Rev. Stat. 1969, ch. 43, par. 120(14) because:

" * * * To hold otherwise would be to close our eyes to the natural and probable sharing of assets and liabilities which constitutes a characteristic of the family unit as it is known in our society. * * * "

Subsequently, however, the Appellate Court for the Fifth District in People v. Simpkins (1977), 45 Ill. App. 3d 202, ruled that no conflict of interest within the meaning of the Corrupt Practices Act existed in a situation where the mayor's wife was an employee of and paid from the city treasury.

In so ruling, the court, at pages 206-207 stated that:

"Without questioning the result in Bock, which was undoubtedly rightly decided, we think that its special facts, its posture on appeal, and the considerations of policy underlying the statute there involved so distinguish that case from the one at bar that it has little persuasive value. In any event, Bock - the narrow holding of which was that the decision of the board was not against the manifest weight of the evidence - does not stand for the broad proposition that a wife's interest in a contract is necessarily her husband's interest." (Emphasis added.)

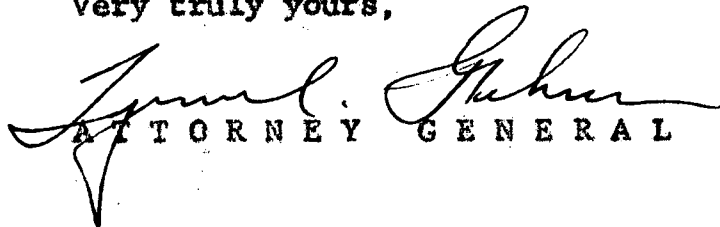
Moreover, the Simpkins court, at pages 208, 209, interpreted the "indirect interest" prohibited by section 3 of the Corrupt Practices Act to mean:

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" * * * the interest of the official such as ownership of stock or a beneficial interest in a trust, not the individual interest of another to whom the official is related. The language is intended to prevent imaginative schemes by which an official might veil his interest from public view. * * * "

Consequently, based on the holdings in Simpkins and in Hollister, it is my opinion that the mere employment of a school board member's spouse as a teacher in the district governed by that school board, is not, per se, a violation of the Corrupt Practices Act.

Very truly yours,


ATTORNEY GENERAL