

Office of Government Ethics

96 x 17--08/23/96

Letter to a Former Federal Employee dated August 23, 1996

This is in response to your recent letter, dated June 28, 1996, in which you raise the issue of whether paragraphs (h) and (n) of section 101 of Executive Order 12674 1 can apply to the work environment, when 5 U.S.C. § 3110 "allows husbands and wives to work in the same office and for each other." Your letter is apparently based upon an incomplete understanding of both the statutory and regulatory restrictions. Section 3110, commonly referred to as the "anti-nepotism" statute, bars public officials from appointing, employing or promoting individuals who are relatives of the public official. The statute and the implementing regulations make it clear that even recommending a relative for appointment or promotion is barred. 5 U.S.C. § 3110(b); 5 C.F.R. § 310.103(a). Thus, while spouses could work in the same office, one spouse could not hire the other spouse to work there as well, or even recommend the other spouse for promotion. Indeed, such an action could also constitute a violation of the criminal conflict of interest statute, 18 U.S.C. § 208. Section 208 prohibits employees from participating as a Government employee in any matter that would affect their financial interests. Financial interests of an employee's spouse are attributed to the employee under section 208.

Based upon the foregoing, it is clear that there is no conflict between these statutes and section 101 (h) and (n) of E.O. 12674. Section 101 (h) states that "[e]mployees shall act impartially and not give preferential treatment to any private organization or individual." Section 101 (n) reads "[e]mployees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards promulgated pursuant to this order." Conduct that would violate the statutes would also violate the Executive order. The converse is also true; conduct that is consistent with the requirements of the Executive order would not violate the statutory restrictions. It is equally clear that the restrictions stated in sections (h) and (n) of E.O. 12674 apply to all executive branch employees other than enlisted personnel. These restrictions are restated in subpart A of the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct), 5 C.F.R. part 2635. See 5 C.F.R. § 2635.101(a)(8) and (a)(14). The Standards of Conduct clearly state that violation of the Standards of Conduct or any agency supplemental regulation thereto may be cause for disciplinary action. 5 C.F.R. § 2635.106(a). 2

We hope that this information is helpful to you.

Sincerely,

Stephen D. Potts
Director

1 E.O. 12674 was modified by E.O. 12731, 3 C.F.R., 1990 Comp., p. 306. The cited sections, however, were not changed by E.O. 12731.

2 In your letter you ask whether a violation of the Standards of Conduct can occur without the violation having been reported by a coworker. The answer is clearly yes. There is no requirement that a coworker report a violation of the Standards of Conduct for disciplinary action to occur.