

August 14, 2008

Ileene S. Wallace, Council Member
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154

Via First Class Mail and Fax at 305.866.4863

Re: INQ 08-137, State Anti-Nepotism Law (Fla. Stat. 112.3135)

Dear Ms. Wallace:

In your letter of August 8, 2008, you asked if the Town Council on which you serve could appoint your husband to the Town's Planning & Zoning Board if you recused yourself from advocating for and/or voting on the appointment.

Your question falls within the state anti-nepotism prohibition at Fla. Stat. 112.3135. The Miami-Dade Commission on Ethics does not have jurisdiction to interpret Florida statutes, but for your convenience, we direct you to the following for further perusal:

- Fla. Stat. 112.3135 (2008) appears to prohibit an appointment to a land-planning or zoning board by a municipal council if a relative of the appointee sits on the council—even if that relative on the council does not advocate for or participate in the vote.
- Kinzer v. Commission on Ethics, 654 So. 2d 1007 (3rd DCA 1995), carved out an exception to the prohibition on appointments of relatives for municipalities with populations of less than 35,000—but that exception does not apply to appointments to boards having land-planning or zoning responsibilities.
- Florida Attorney General Opinion AGO 83-13 distinguished between appointments made directly by the collegial body (*e.g.*, the municipal council) and appointments that are merely approved or disapproved by the collegial body, but are actually made by “another official vested by law with the authority to appoint or employ.”
- State Commission on Ethics Opinion CEO 95-12 discusses the rationale for amending the anti-nepotism statute to include “collegial bodies” and the applicability of the law to both paid and unpaid positions.

For an official opinion on your question, please contact your town attorney or the State Commission on Ethics at P.O. Drawer 15709, Tallahassee, FL 32317.

Sincerely,

VICTORIA FRIGO
Staff Attorney

Copies: Craig Sherman, Town Attorney
Ron Wasson, Town Manager