

SCOMM

#51:26

July 1, 1983

CS HB 49 (SA): Nepotism in state employment

History - IN THE HOUSE

State Affairs: Hearings 1/26, 2/10, 2/22 and final passing out of committee on February 28.

Judiciary: Hearings 4/13 and 4/25. Rep. Bussell (and others - perhaps Rep. Liska?) wanted to try to address the relationship between non-married state employees living together. John Rubini of the AG's office pointed out that there could be constitutional problems related to invasion of privacy but said he would work on the question. Nothing happened after that.

John also said that the Division of Personnel may, contrary to the earlier AG's opinion, have authority to adopt nepotism regulations which are more comprehensive (and restrictive) than the nepotism statute, which (if it were true) would make this bill unnecessary.

Note: Senator Ray wanted, at one time, to try to include non-married people living in a marital-style relationship within the nepotism prohibitions. See my short note to him dated February 7th.

At one time, there was discussion of changing the language so that "close relatives" were prohibited from employment situations, rather than prohibiting "spouses or persons related by blood or marriage within and including the second degree of kindred" and then providing, in the bill, a definition of "close relatives." This might make the bill more readable, and could be pursued later if the bill goes anywhere.

A copy of the case which has been filed, challenging DOT's implementation of nepotism regulations, is enclosed. John Rubini said that it wasn't going anywhere, the last time I spoke with him about it. The case may be assigned to someone else.

Companion bill: SB 56 is identical to the original HB 49. It had no hearings last session, largely because Nancy Groshek, Sen. Vic Fischer's aide, does not believe in nepotism restrictions. From what I can tell, she is unlikely to change her mind.

STATE OF ALASKA

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

April 25, 1983

*Clocksin - promotion
across dept lines*

The Honorable Charlie Bussell
Chairman, House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: CS for HB 49
Our file no.: 366-568-83

Dear Representative Bussell:

This letter responds to the several questions relating to the nepotism restrictions proposed in the CS for HB 49, now pending before the House Judiciary Committee.

As discussed at the prior committee hearing, the state is presently a party to litigation which questions the permissible scope of any nepotism prohibition established under the Personnel Rules. Public Employees Local 71 v. State, Case No. 82-4931 Civ. (Third Judicial District). The complaint, filed in June 1982, alleges, in pertinent part, that the director of the division of personnel exceeded statutory authority in adopting Personnel Rule 13 09. The state's position in the litigation is that the personnel Rule was adopted under the authority of AS 39.25. At the present time, the parties are pursuing settlement negotiations.

A brief summary of the legal questions posed in the litigation may prove helpful to the committee. Directly at issue in the litigation is whether AS 39.25.150 confers the requisite statutory authority for the promulgation of any Personnel Rules which relate to a nepotism restriction. See AS 44.62.020. See also Kelly v. Zamarello, 486 P.2d 906, 910 n. 19 (Alaska 1971). If adoption of a nepotism restriction is authorized under AS 39.25, the inquiry turns to whether the rules are "in accordance with standard prescribed by other provision of law." AS 44.62.020. See Boehl v. Sabre Jet Room, Inc., 349 P.2d 585 (Alaska 1960). Our research has not as yet disclosed any Alaska case authority which offers a direct answer to whether it is per-

missible to adopt under the authority of the enabling statute a regulation which extends, but is not inconsistent with, the policy expressed in a separate statutory provision. Two factors may prove relevant were the litigation to proceed to a judicial resolution. First, regulations are typically accorded a presumption of validity. Alaska Intern Industries, Inc. v. Musarra, 602 P.2d 1240 (Alaska 1979). Second, the legislature has amended AS 39.25 subsequent to the enactment of AS 39.10.010, as recently as last session, presumably with knowledge of the long-standing nepotism prohibition in the Personnel Rules. However, since the matter is presently in litigation, any further comment on the merits of the pending litigation would be inappropriate. If, ultimately, the matter is not resolved in the immediate litigation, the Department of Law will review whether the director of personnel enjoys the authority to establish reasonable nepotism restrictions beyond the scope of AS 39.10.010. We are informed that in the interim the division of personnel does not intend to enforce Personnel Rule 13 09. See 1979 Inf. Att'y Gen. Op. (Feb. 13; J-66-191-79).

The committee also questioned whether any legislative action to amend AS 39.10.010 would unduly prejudice the state's position in the litigation. That the propriety of Personnel Rule 13 09 is questioned in pending litigation should not, in our view, impair the Legislature's ability to address this matter. Any inference drawn from the legislature's action or, alternatively, inaction would be speculative at best, and would not be a determining factor in the litigation. Moreover, an appropriate letter of intent would dispel whatever inference may be suggested due to prospective legislative reform.

The committee also raised several questions broadly relating to the scope of CSHB 49. The proposed bill establishes nepotism restrictions specific to state "department[s] or agenc[ies]." Absent specific statutory provision to the contrary, the nepotism restrictions would not apply, for example, to the appointment of members or employees of regulatory boards and commissions, such as those regulatory bodies established in Title 8 of the Alaska Statutes. Further, in its most expansive scope the restrictions concern only the relationship between a prospective employee and the commissioner, deputy commissioner or executive head of a particular agency or department. The bill does not, therefore, address the situation of a relationship between two persons not employed within the same department or agency. The example raised at the prior committee hearing, the appointment of a legislator's spouse or child to a position in a state agency or, for that matter, to a position on any legislator's personal staff, would not be within the ambit of the present bill. Of course, other rules adopted by the legislature to

Rep. Charlie Bussell
CSHB 49
366-568-83

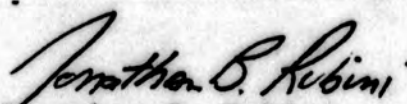
April 25, 1983
Page 3

manage internal affairs may address such a situation. Finally, a question was raised as to whether it would be appropriate to limit the coverage to persons related by blood or marriage. More specifically, the question concerned the possible extension of the nepotism prohibition to persons in a meretricious relationship. Without addressing any policy implications, we caution that amending the bill to obtain the contemplated policy objectives would render the legislation extremely vulnerable to challenge as violative of the constitutional guarantees to equal protection, due process and personal privacy.

Please let us know if we can offer any further assistance on this matter.

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:


Jonathan B. Rubini
Assistant Attorney General

JBR:jb

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

RECEIVED
FEB 24 1983

STATE CAPITOL
JUNEAU, ALASKA 99811
907-461-3800

MEMORANDUM

February 24, 1983

SUBJECT: Nepotism
(HB 49)

TO: Representative Mitchell E. Abood, Jr.
Chairman, House State Affairs Committee

FROM: *LHA* Linn H. Asper
Legislative Counsel

You have asked whether the relationships included in the "second degree of kindred" as that term is defined in the proposed committee substitute for HB 49 are the same relationships that are traditionally associated with that phrase. The term "degree of kindred" is not defined in the Alaska Statutes. In other jurisdictions the "degree of kindred" between one person and another is normally determined as follows: Take the closest common ancestor of the two persons and count the generations back to that ancestor from each; each generation represents a degree of kindred. Thus, the first degree of kindred to a person includes the parents and children of that person, the second degree includes brothers and sisters, grandparents, and grandchildren, and the third degree includes nephews and nieces and aunts and uncles. In proposed CSHB 49 aunts and uncles are included within the definition of "second degree of kindred" although they would normally be considered to be in the "third degree of kindred". In other respects the statutory and common law definitions are the same.

It should be pointed out that since the definition of "second degree of kindred" in the proposed CSHB 49 only applies to the section in which it appears, the term can include any relationships that the legislature sees fit to include. You can also use a different term, such as "close relationship" if you feel that use of the traditional "degree of kindred" terminology will cause confusion.

LHA:ljb

Enclosure



JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

Pouch YG
Mail Stop 3123
Juneau, Alaska 99811
(907) 465-4442

February 21, 1983

TO: Linn Asper, Legislative Counsel

FROM: Teresa B. Cramer *Terry*
Administrative Assistant

SUBJECT: HB 49 - Relating to Nepotism in State Employment
Work Order 13-0396

The Department of Law has prepared a proposed committee substitute to HB 49 which need some changes. Since John Rubini is out of town, could you review the following changes and, if there is no problem with them, prepare a committee substitute for a hearing in State Affairs tomorrow afternoon? Thanks.

ADD TO LINE 26

The commissioner of the department or the executive head of the agency may not approve an appointment which places a person in a direct supervisory relationship to a spouse or a person within the second degree of kindred.

LINE 28 - Add paragraph (d):

(d) For purposes of this section, "second degree of kindred" includes father, mother, son, daughter, brother, sister, husband, wife, grandfather, grandmother, grandson, granddaughter, uncle and aunt including those involving half or step relationships.

1 IN THE _____

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 _____ BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to nepotism in state employment; and
7 providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 39.10.010 is repealed and reenacted to read:

10 Sec. 39.10.010. NEPOTISM PROHIBITED. (a) The appointing au-
11 thority under AS 39.25.020 may not appoint a person to a position in a
12 state department or agency, if that person is the spouse of or is
13 related by blood or marriage within and including the second degree of
14 kindred to the commissioner or a deputy or assistant commissioner of
15 the principal department, or to the executive head of the agency.

16 (b) The appointing authority under AS 39.25.020 may not appoint
17 a person to a position in a division of a state department or agency,
18 if that person is the spouse of, or is related by blood or marriage
19 within and including the second degree of kindred to, the executive
20 head of the division.

21 (c) The appointing authority under AS 39.25.020 may not appoint
22 a person to a position in a state department or agency in the execu-
23 tive branch, if that person is the spouse of, or is related by blood
24 or marriage within and including the second degree of kindred to, an
25 employee in the department or agency unless the ~~appointing authority~~
commissioner of the department or executive head of the agency
26 approves the appointment in writing. ~~ADD~~ An appointment prohibited by (a)
27 or (b) of this section may not be approved under this subsection.

28 * Sec. ~~34~~ 34. This Act takes effect immediately in accordance with AS 01.-
29 10.070(c).

Sec 2. Def. of *2nd degree of kindred*
~~appointing auth.~~ - from PR's

03-038

~~Sec 3. Pled adopt legs to implement~~

February 7, 1983

Senator Ray -

I looked for a definition for people living together but not married and came up with the following from AS 18.66.900(3):

"domestic violence" means a crime specified in AS 11.41 when the victim is a spouse or a former spouse of the defendant or a member of the social unit comprised of those living together in the same dwelling as the defendant.

I called the Council on Domestic Violence and Sexual Assault to ask whether they had anything which would explain "social unit." They don't but they are working on a definition and will let me know if they develop something satisfactory. Is this the language you were interested in adding to the nepotism statute?

Jerry

*2/8 - Hold for
hearing in committee*

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

DIVISION OF PERSONNEL
February 2, 1983

BILL SHEFFIELD, GOVERNOR

POUCH C-0201
JUNEAU, ALASKA 99811-0201
(907) 465-4430

Honorable Mitch Abood
Chairman
House State Affairs Committee
Alaska State Legislature

Dear Mr. Chairman:

This is a follow up to my testimony given before the House State Affairs Committee on January 26, 1983. At your request I am reducing to writing some of my concerns about House Bill 49.

At the outset I wish to express my support for a nepotism bill for the Executive Branch of Government. At the present time AS 39.10.010 only prohibits spouses and close relatives of "... the executive head of a principal state department or agency..." from being employed. Therefore the need for additional prohibitions is obvious.

There are, however, some potential problems with House Bill 49 which I would like to point out:

1. Concepts of Nepotism - There are two concepts of nepotism, one of which should be decided on:
 - a. The Narrow Concept - Nepotism is the prohibition of a high official from using his or her influence to hire a spouse or other close relative.
 - b. The Broader Concept - Nepotism is the prohibition of spouses or close relatives working together.

Under the first concept, it would be permissible for two people to continue to work together provided they were married after being employed. Under the second broader concept, when two employees got married, one of them would have to quit because of apparent conflict of interest.

I recommend the narrower concept to allow people who meet on the job and decide to live together to have the choice of marriage.

It is my understanding that the phrase "A person may not be appointed..." incorporates the narrower concept only. I support this interpretation. However, I feel it is arguable. There-

FR/sjh

c.c. Teresa B. Cramer
Blue Ribbon Commission

Commissioner Lisa Rudd
Department of Administration

Members of Blue Ribbon Commission

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF ADMINISTRATION

DIVISION OF PERSONNEL
February 2, 1983

POUCH C-0201
JUNEAU, ALASKA 99811-0201
(907) 465-4430

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Chairman
House State Affairs Committee
Alaska State Legislature

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I recommend the narrower concept to allow people who meet on the job and decide to live together to have the choice of marriage.

It is my understanding that the phrase "A person may not be appointed..." incorporates the narrower concept only. I support this interpretation. However, I feel it is arguable. There-

fore, I recommend that the intent of the legislation be clear in the bill so that it will not be administered on the basis of an Attorney General's Opinion.

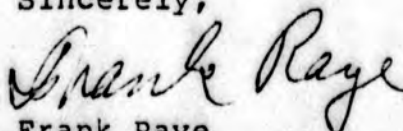
2. Possible conflict with Title 13 - Alaska law prohibits discrimination on the basis of marital status or change in marital status. To prohibit one from working with a spouse could be argued to be discrimination. The counter argument is that the discrimination is based on who a person is married to (that is a state employee) not on marital status per se (that is if a person is married or single). Again, I believe the argument should be settled prior to the adoption of the legislation.
3. Approval by the Director of Personnel - Paragraph C of House Bill 49 prohibits a person from being appointed to any executive branch, department or agency if they are the spouse or close relative to any other employee in that department or agency "...unless the director of personnel and the appointing authority approve the appointment in writing."

I recommend that language be changed to permit the executive head of a department or agency to give written approval. I see no need to have the Director of Personnel give approval. Furthermore, you may wish to state in the bill conditions under which commissioners and agency heads may give their approval. For example, it may be desirable to prohibit one spouse from supervising another.

4. Definition - I also suggest the bill provide a definition of "second degree of kindred". This is a term which, as I understand it, comes from probate law and which does in fact have a legal definition. However, that definition is not commonly understood nor readily available.

Thank you for the opportunity to give testimony before your committee and for considering these points. I will be glad to appear before you again to answer any questions or discuss any of these issues further.

Sincerely,



Frank Raye
Director

FR/sjh

c.c. Teresa B. Cramer
Blue Ribbon Commission

Commissioner Lisa Rudd
Department of Administration

Members of Blue Ribbon Commission

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

PUBLIC EMPLOYEES LOCAL 71,
AFL-CIO

Plaintiff,

vs.

STATE OF ALASKA; THE DIVISION
OF PERSONNEL, DEPARTMENT OF ADM-
MINISTRATION; KENNETH KARREN, in
his official capacity as DIRECTOR OF
THE DIVISION OF PERSONNEL; CAROL
BURGER, in her official capacity as
COMMISSIONER OF THE DEPARTMENT OF
ADMINISTRATION; THE BOARD OF PERSONNEL;
THE DEPARTMENT OF TRANSPORTATION,

Defendant

Civ. No.

82-4931

SUMMONS

To the above-named defendants:

You are hereby summoned and required to serve upon Kevin Dougherty,
plaintiff's attorney, whose address is 2501 Commercial Drive, Box 899,
Anchorage, Alaska 99510, an answer to the complaint which is herewith
served upon you within 40 days after the service of this summons upon
you, exclusive of the day of service. If you fail to do so, judgment
by default will be taken against you for the relief demanded in the
complaint.



GOLDEEN GOODFELLOW
Clerk of Court

Clerk of the Court

By

Deputy

R. Jordan

DATED:

6.23.82

DIRECTOR'S OFFICE

JUN 25 1982

DIVISION OF
LABOR RELATIONS

KEVIN DOUGHERTY, ESQ.
ATTORNEY AT LAW
P. O. BOX 899
ANCHORAGE, ALASKA 99510
(907) 279-1640

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

PUBLIC EMPLOYEES LOCAL 71,
AFL-CIO

Plaintiff,

vs.

STATE OF ALASKA; THE DIVISION
OF PERSONNEL, DEPARTMENT OF ADM-
MINISTRATION; KENNETH KARREN ,in
his official capacity as DIRECTOR OF
THE DIVISION OF PERSONNEL; CAROL
BURGER, in her official capacity as
COMMISSIONER OF THE DEPARTMENT OF
ADMINISTRATION; THE BOARD OF PERSONNEL;
THE DEPARTMENT OF TRANSPORTATION,

Defendant

Civ. No.

82-4931

COMPLAINT

COMES NOW the plaintiff, Public Employees Local 71, AFL-CIO as
alleges as follows:

THE PARTIES;

1.(a) Plaintiff Public Employees Local 71 is a labor organization
certified, pursuant to A.S.23.40.100, as the exclusive collective bar-
gaining representative for all persons employed by the State of Alaska
within the Labor, Trades and Craft (LTC) unit.

(b) Defendant State of Alaska is a governmental body which
employs persons in the LTC unit for the purpose of discharging its
public functions.

(c) Defendant the Division of Personnel is a governmental agency
of the State charged with administering the State Personnel Act. A.S.39.25.

(d) Defendant Kenneth Kareen, the Director of the Division of
Personnel is a public officer charged with directing and supervising the

Division and also charged with promulgating personnel rules not inconsistent with the State Personnel Act and which are required to implement and administer that Act.

(e) Defendant Carol Burger, the Commissioner of Administration, is a public officer charged with reviewing the State personnel rules.

(f) Defendant Board of Personnel is a governmental agency of the State charged with final approval or disapproval of the State personnel rules.

(g) Defendant Department of Transportation is a governmental agency authorized to adopt personnel regulations pertaining to its employees and subject to the approval of the Director of Personnel. A.S.39.25.153.

2. On May 22, 1980, plaintiff and the State of Alaska entered into a collective bargaining agreement (attached hereto).

3. That the agreement provides for the fair and orderly distribution of employment opportunities with the State of Alaska for all qualified applicants. Article IV of that agreement states in part,"

PREFERENTIAL HIRING FACILITIES

1. The Union agrees to maintain preferential hiring facilities for the purpose of soliciting qualified workmen in order to fill all Employer referral requests. Except for promotions, demotions, transfers and emergency appointments, the Employer agrees to use such referral services and will call upon the Union to furnish all qualified workmen required. The Employer further agrees to notify the Union of all promotions, demotions, transfers and emergency appointments."

4. That Defendants have promulgated Personnel Rule 13.09.03 which states,"

13 09.3 No person may be employed in a position in any agency who is the spouse of or is related by blood or marriage within and including the second degree of kindred to any other employee in the agency without the expressed approval of the appointing authority and the Director."

5. That Defendant Department of Transportation has promulgated Policy and Procedures No. 22-8002 (copy attached hereto).

6. Acting pursuant to such rules and its policies Defendants have rejected the applications for employment of;

Bonnie Francis on May 4, 1982,
Michael Hartman on May 10, 1982,
Chris Howath on May 10, 1982,
Sami Killian on May 13, 1982,
Darren Morfield on June 10, 1982,
Diane Taylor on May 26, 1982,
Darrel Thompson on June 26, 1982,
Randall Miller on May 24, 1982,
Rodney Brown, on June 1, 1982,
Blake Beaudoin, on May 5, 1982,

despite their qualifications for that employment opening with the State, based solely on said personnel rules and its policies.

7. That Edwardo Machuca was discharged from employment with defendant on May 21, 1982 based solely on said personnel rules and its policies.

8. That plaintiff has reason to believe that defendants will continue such unfair and restrictive practices pursuant to said personnel rules and its policies.

9. That the Defendants unreasonably broad definition of nepotism within such rules arbitrarily and capriciously precludes employment for qualified applicants.

10. That such personnel rules and regulations are contrary to very purpose of the State Personnel Act, as expressly set forth in A.S.39.25.010.

11. That the Director of Personnel has exceeded the statutory authority conferred upon him in A.S.39.25.050 by preparing such rules contrary and inconsistent with the purpose of the State Personnel Act.

12. That the Board of Personnel has exceeded the statutory authority conferred upon it in A.S.39.25.070 through its acts of adopting and approving said personnel rules.

13. That Personnel Rule 13.09.3 and Policy and Procedure No. 22-8002 exceed the narrow scope of the personnel rules as expressly prescribed in A.S.39.25.150.

14. That Personnel Rule 13.09.3 and Policy and Procedure No. 22-8002 has created a classification of persons based on kindred relationship which arbitrarily and unreasonably restricts plaintiffs employment opportunities.

15. That such classification violates the equal protection clause of Article 1 - 1 of the Alaska Constitution and of the Fourteenth Amendment of the U. S. Constitution.

16. That said regulations and policies arbitrarily and capriciously deprive qualified applicants of their rights to fair employment opportunities as bestowed upon them by the parties collective bargaining agreement.

17. That said regulations and policies violate the due process clause of Article 1 - 7 of the Alaska Constitution and of the Fourteenth Amendment of the U. S. Constitution.

WHEREFORE, Plaintiff prays for the following relief :

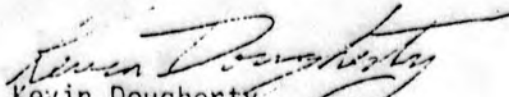
1. For a declaratory judgement entered that declares Personnel Rule 13.09.3 and Policy and Procedure no. 22-8002 invalid,

2. For injunctive relief, enjoining defendants their officers, agents, servants and employees from the use, enforcement or application of such regulations,

3. For judgement against defendants in the amount of back wages lost through defendants unlawful actions and policies.

4. For other relief as the Court may deem just and equitable.

Date this 23 day of June 1982 at Anchorage, Alaska.


Kevin Dougherty
Attorney for Plaintiff



JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

Pouch YG
Mail Stop 3123
Juneau, Alaska 99811
(907) 465-4442

MEMORANDUM

March 2, 1983

TO: House Judiciary Committee

FROM: Teresa B. Cramer *Teresa B. Cramer*
Administrative Assistant

SUBJECT: Committee Substitute for House Bill 49 (State Affairs)
Nepotism in State Government

The existing statute prohibiting nepotism in state employment forbids only the employment of anyone related to the executive head of a department or agency. The statute states in full:

It is unlawful for a person who is the spouse of or is related by blood within and including the second degree of kindred to the executive head of a principal state department or agency to be employed in that department or agency. AS 39.10.010.

The Personnel Rule is more extensive, prohibiting the employment of relatives of the head of a division or subdivision within that division or subdivision. In addition, the Rule prohibits the employment of two related persons in the same agency unless express approval is given by both the appointing authority and the Director of Personnel. A copy of the Rule is attached.

The scope of the Personnel Rule is broader than the statutory authority granted in AS 39.10.010. The rule-making authority given to the Personnel Board by the State Personnel Act may not extend to nepotism, since the nepotism statute is not part of that Act. The Attorney General has advised the Division of Personnel that the nepotism rule exceeds the scope of statutory authority. A lawsuit has been filed challenging the Department of Transportation's implementation of nepotism prohibitions.

The Blue Ribbon Commission recommends that legislation prohibiting nepotism in state employment be adopted to provide statutory authority for the Personnel Rule. The prohibition against employing relatives does limit the opportunities for some Alaskans to find state jobs. The disadvantage to those people should be weighed against the appearance of impropriety and favoritism which is created by people working for a close relative who is a highly-placed state official.

Bill Analysis

Page 1 The first section of the Committee Substitute is based on the
Line 9 existing statute and Personnel Rule. The first paragraph
 prohibits the appointment of relatives or the spouse of the
 commissioner, assistant or deputy commissioner of a department
 or the relatives or spouse of an executive head of an agency.
 The reference to AS 39.25.020 means that the prohibition will
 extend to departments or agencies in all branches of government.

Paragraph (a) differs from the existing Personnel Rule and the statute by including reference to assistant and deputy commissioners and by its application to departments and agencies which are not part of the executive branch of government. It also differs by prohibiting the appointment rather than the employment of relatives. Prohibiting appointments of relatives permits people whose relationship is created (by marriage or adoption) after both are employed within a department to continue their employment even if one is the commissioner, deputy or assistant commissioner. However, the relative could not be promoted while related to the commissioner, since a promotion is an appointment to a higher position.

Line 16 Paragraph (b) prohibits the appointment of relatives of a
 division director to a position within that division. Like
 the first section, this prohibition extends to all branches
 of government through reference to AS 39.25.020.

Line 21 Paragraph (c) requires that before two relatives may be
 employed in the same department, the commissioner must
 approve the appointment in writing. This prohibition is
 limited to the executive branch.

Line 27 The commissioner may not approve an appointment if one of
 the people will be working in a direct supervisory relation-
 ship to the other spouse or relative.

Page 2 The commissioner may not approve an appointment which is
Line 1 prohibited by paragraphs (a) or (b).

Line 3 Paragraph (d) defines "second degree of kindred" as it is
 defined in the current Personnel Rule. The definition extends
 beyond the normal definition by including aunts and uncles,

who are usually defined as being third degree kindred. The definition applies only to the nepotism statute.)

"Second degree of kindred" is defined to include full, half, and step relationships. It does not include in-law relationships.

Line 7 The second section of the Committee Substitute provides for an immediate effective date.

TBC:lmk
Attachment

13 09.0 Nepotism

13 09.1 No person may be employed in a position in any agency who is the spouse of or is related by blood or marriage within and including the second degree of kindred to the appointing authority of the agency.

13 09.2 No person may be employed in a position in any division or subdivision of any agency who is the spouse of or is related by blood or marriage within and including the second degree of kindred to the head of the division or subdivision of the agency.

13 09.3 No person may be employed in a position in any agency who is the spouse of or is related by blood or marriage within and including the second degree of kindred to any other employee in the agency without the expressed approval of the appointing authority and the Director.



JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

Pouch YG
Mail Stop 3123
Juneau, Alaska 99811
(907) 465-4442

MEMORANDUM

January 20, 1983

TO: House State Affairs Committee

FROM: Teresa B. Cramer *Teresa B. Cramer*
Administrative Assistant

SUBJECT: House Bill 49, Relating to Nepotism in State Employment

The existing statute prohibiting nepotism in state employment forbids only the employment of anyone related to the executive head of a department or agency. AS 39.10.010. The Personnel Rule is more extensive, prohibiting the employment of relatives of the head of a division or subdivision within that division or subdivision. In addition, the Rule prohibits the employment of two related persons in the same agency unless express approval is given by both the appointing authority and the Director of Personnel.

The scope of the Personnel Rule is broader than the statutory authority granted in AS 39.10.010. In addition, the rule-making authority given to the Personnel Board by the State Personnel Act may not extend to nepotism, since the nepotism statute is placed outside the Act. The Attorney General has advised the Division of Personnel that the nepotism rule may exceed the scope of statutory authority. A lawsuit has been filed challenging the Department of Transportation's implementation of nepotism prohibitions.

The Blue Ribbon Commission recommends that legislation prohibiting nepotism in state employment be adopted to provide statutory authority for the Personnel Rule. The prohibition against employing relatives does limit the opportunities for some Alaskans to find state jobs. The disadvantage to those people should be weighed against the appearance of impropriety and favoritism which is created by people working for a close relative. Problems can also arise if relatives are working in the same office so it is appropriate that the hiring decision be scrutinized with the potential for personnel problems in mind.

Bill Analysis

Page 1 The first section of the proposed legislation codifies the
Line 9 Personnel Rule. The first paragraph retains the existing
nepotism prohibition and extends it to include relatives of

deputy or assistant commissioners. The prohibition against employing a person related to the executive head of an agency applies to all legislative, judicial and executive branch agencies.

- Line 17 The second paragraph adds new language based on the Personnel Rule to prohibit appointment of a relative of the head of a division within that division. It applies to positions in the legislative, judicial or executive branch.
- Line 22 The third paragraph prohibits employment of two relatives within the same executive branch department or agency unless the appointing authority and the Director of Personnel approve the second appointment in writing.

In each of the paragraphs, relatives include spouses and persons within the "second degree of kindred", which the Personnel Rules define as:

father, mother, son, daughter, brother, sister,
husband, wife, grandfather, grandmother, grandson,
granddaughter, uncle and aunt including those
involving half or step relationships.

- Line 29 The second section of the proposed legislation provides for an immediate effective date.

Introduced: 1/18/83
Referred: State Affairs and
Judiciary

BY THE RULES COMMITTEE BY
REQUEST OF THE LEGISLATIVE
COUNCIL (for the Blue
Ribbon Commission on the
State Personnel Act)

1 IN THE HOUSE

2 HOUSE BILL NO. 49

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to nepotism in state employment; and
7 providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 39.10.010 is repealed and reenacted to read:

10 Sec. 39.10.010. NEPOTISM PROHIBITED. (a) A person may not be
11 appointed to a position in a state department or agency, whether in
12 the legislative, judicial, or executive branch, if that person is the
13 spouse of or is related by blood or marriage within and including the
14 second degree of kindred to the commissioner or a deputy or assistant
15 commissioner of the principal department, or to the executive head of
16 the agency.

17 (b) A person may not be appointed to a position in a division of
18 a state department or agency, whether in the legislative, judicial, or
19 executive branch, if that person is the spouse of, or is related by
20 blood or marriage within and including the second degree of kindred
21 to, the executive head of the division.

22 (c) A person may not be appointed to a position in a state
23 department or agency in the executive branch, if that person is the
24 spouse of, or is related by blood or marriage within and including the
25 second degree of kindred to, an employee in the department or agency
26 unless the director of personnel and the appointing authority approve
27 the appointment in writing. An appointment prohibited by (a) or (b)
28 of this section may not be approved under this subsection.

29 * Sec. 2. This Act takes effect immediately in accordance with

Offered: 2/28/83
Referred: Judiciary

Original sponsor: Rules/Legislative
Council

1 IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE
2 CS FOR HOUSE BILL NO. 49 (State Affairs)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
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14 kindred to the commissioner or a deputy or assistant commissioner of
15 the principal department, or to the executive head of the agency.
16 (b) The appointing authority under AS 39.25.020 may not appoint
17 a person to a position in a division of a state department or agency,
18 if that person is the spouse of, or is related by blood or marriage
19 within and including the second degree of kindred to, the executive
20 head of the division.
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22 a person to a position in a state department or agency in the execu-
23 tive branch, if that person is the spouse of, or is related by blood
24 or marriage within and including the second degree of kindred to, an
25 employee in the department or agency unless the commissioner of the
26 department or the executive head of the agency approves the appoint-
27 ment in writing. The commissioner of the department or the executive
28 head of the agency may not approve an appointment under this sub-
29 section that places a person in a direct supervisory relationship to a



JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

Pouch YG
Mail Stop 3123
Juneau, Alaska 99811
(907) 465-4442

MEMORANDUM

December 14, 1982

TO: Members of the Blue Ribbon Commission

FROM: Teresa B. Cramer *Terry*
Administrative Assistant

SUBJECT: Nepotism Regulations

I received a telephone call from a state employee concerning the effect of nepotism regulations. She reported that a man wanted to work for the Juneau Job Service Office but was told that he could not while his niece by marriage was employed there as a secretary. She had recently moved to Juneau and he had met her only a few weeks before. The niece found another secretarial position so he was hired. There would not have been a direct supervisory relationship between the man and his niece. The caller also said that she had thought of transferring from Juneau to Ketchikan but that she could not because her sister-in-law already worked in the Job Service Office there. She did not believe their personal relationship would have affected their work.

The Personnel Rules permit the departmental appointing authority and the Director of Personnel to waive the prohibition in these situations. Apparently the Job Service Center policy was against requesting nepotism waivers.

She has observed, however, that personal relationships can cause employee problems. A person and his mistress were employed in an office where she worked and when they were having a quarrel outside work it affected their behavior at work and caused tension in the whole office. Nepotism regulations do not address this situation at all.

TBC:lmk

Offered: 2/28/83
Referred: Judiciary

Original sponsor: Rules/Legislative
Council

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17 a person to a position in a division of a state department or agency,
18 if that person is the spouse of, or is related by blood or marriage
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20 head of the division.

21 (c) The appointing authority under AS 39.25.020 may not appoint
22 a person to a position in a state department or agency in the execu-
23 tive branch, if that person is the spouse of, or is related by blood
24 or marriage within and including the second degree of kindred to, an
25 employee in the department or agency unless the commissioner of the
26 department or the executive head of the agency approves the appoint-
27 ment in writing. The commissioner of the department or the executive
28 head of the agency may not approve an appointment under this sub-
29 section that places a person in a direct supervisory relationship to a

1 spouse or to a person within the second degree of kindred, or that is
2 prohibited by (a) or (b) of this section.

3 (d) In this section "second degree of kindred" includes a
4 father, mother, son, daughter, brother, sister, grandfather, grand-
5 mother, grandson, granddaughter, uncle, or aunt in a full, half, or
6 step relationship.

7 * Sec. 2. This Act takes effect immediately in accordance with AS 01.-
8 10.070(c).



JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

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TBC:lmk

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
POLICY AND PROCEDURES

P & F No.

22-8002

1 OF 3

Effective Date

5/26/82

SUBJECT

CONTROL OF NEPOTISM WAIVERS

Supersedes P & F No.

22-8002

Dated

3/1/82

APPROVED BY

[Signature]

DIVISION

Support Services

SECTION

Personnel

CHAPTER TITLE

General

PURPOSE:

To establish a standard procedure to control the approval of nepotism waivers for all employees of this Department, including employees of Marine Highways.

POLICY:

It is the policy of this Department to not hire or commit to hire employees which require a nepotism waiver prior to its approval. It is further the Department's policy to approve all legal waivers where employees are not in the same division. Requests for nepotism waivers for employees within the same division are not encouraged; however, it is recognized that in areas where we have critical shortages of candidates in certain job classifications, it may be necessary; this will normally be a last resort consideration after all other possibilities have been explored. Under no circumstances will we consider the hire of relatives within and including the second degree of kindred (see Personnel Rule No. 1) who would have a direct supervisory/subordinate relationship.

DISTRIBUTION:

All holders of the Policy and Procedures Manual and posting on bulletin boards to the extent of insuring proper notice to all employees of this Department.

PROCEDURE:

Request for nepotism waiver for a position is initiated by completing the form shown on page 2 for classified positions or the form shown on page 3 for vessel employees. Care will be taken to be sure that justification for hire is logical and adequate. If the request is for nepotism within a division, the justification must explain the extraordinary circumstances which necessitate the request and must indicate that no supervisory/subordinate relationship exist or is likely to exist in the future.

After initiation and signing by immediate supervisors, the form will be processed through normal administrative channels to the Deputy Commissioner for the unit wanting to hire the new employee. The form should then be submitted to the Department Personnel Officer who will be responsible for forwarding approved requests for classified positions to the Division of Personnel for final approval. If time is of the essence and the Deputy Commissioner has delegated the authority, request may be made for non-intra divisional waivers by a telephone call to the Department Personnel Officer who will prepare the form and secure final approval.

Requests denied will be returned indicating reasons therefore. Requests for vessel employees will be returned to the Division of Marine Highways indicating approval or denial. A copy of each approved nepotism waiver will be placed in each employee file.

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
POLICY AND PROCEDURES

P & P No. 22-8002	Page 1 OF 3
Effective Date 5/26/82	
Supersedes P & P No. 22-8002	Dated 3/1/82
APPROVED BY <i>[Signature]</i>	

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