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Robert R. Corbin

July 23, 1980

The Honorable Jim Hartdegen  
Arizona State Representative  
Arizona House of Representatives  
Phoenix, Arizona 85007

Re: I80-139 (R80-094)

Dear Representative Hartdegen:

In your letter of April 15, 1980, you asked for an opinion on the question whether there is a conflict of interest arising from the fact that a town magistrate is married to the chief of police of the same town. We understand that the question is further qualified by the fact that the chief of police supervises approximately five deputies.

Before discussing the conflict of interest issues, a review of the duties of magistrates and police officers should be made.

A town magistrate's duties include: finding reasonable cause to sustain felony or misdemeanor complaints (Rule of Criminal Procedure 2.4); issuing summonses and warrants (Rule 3.1); presiding at initial appearances (Rule 4.2); conducting preliminary hearings and misdemeanor criminal trials (Rules 5.1, et. seq. and A.R.S. §§ 22-301 and 22-402); and determining release conditions for criminal defendants (Rule 7.4).

A police officer is a peace officer who has a duty to enforce the law, including the power to make arrests (A.R.S. § 13-3883). Inevitable parts of a policeman's job include signing complaints initiating criminal proceedings and appearing as a witness at preliminary hearings and misdemeanor criminal trials before a magistrate. A chief of police has the additional duty to supervise other peace officers.

We conclude, based upon the interaction between the spouses' duties, that a conflict of interest for the magistrate exists under A.R.S. § 38-503(B) as to every criminal case in which the city police department is involved. This conflict of

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interest mandates that the magistrate not sit on any such criminal case. We further conclude that a second conflict of interest for the magistrate arises from the Code of Judicial Conduct.

First, as to the statutory conflict of interest, the provision which applies is A.R.S. § 38-503(B), which reads as follows:

"Any public officer or employee who has, or whose relative has, a substantial interest in any decision of a public agency shall make known such interest in the official records of such public agency and shall refrain from participating in any manner as an officer or employee in such decision."

Courts are explicitly included within the definition of "public agency" (see A.R.S. § 38-502(6)).

A "substantial interest" is defined in A.R.S. § 38-502(11) to mean "any pecuniary or proprietary interest, either direct or indirect, other than a remote interest". The interest of the police chief, if any, is clearly not any of the "remote interests" set forth in A.R.S. § 38-502(10). The question, then, is whether the police chief has a pecuniary or proprietary interest in decisions made by the magistrate in cases in which the police department is involved.

The term "pecuniary or proprietary interest" was an amendment to the original more broad definition of "substantial interest". The amendment appears to have been prompted by and adopted from the case of Yetman v. Naumann, 16 Ariz.App. 314, 492 P.2d 1252 (1972), wherein the Court of Appeals reasoned that not all interests other than "remote interests" constituted "substantial interests", but rather only those interests which were "pecuniary or proprietary" constituted "substantial interests". The court, however, construed the phrase "pecuniary or proprietary interest" broadly, stating that it is any interest "by which a person will gain or lose something as contrasted to general sympathy, feeling or bias".

A large part of the duties of a police force consists of making arrests and providing testimony when required at preliminary hearings and criminal trials. It is obvious that a police chief's job could well depend in part on the number of arrests made by his department, and of those arrests, the number of convictions that result. It is equally obvious that

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if a magistrate sits on a case in which the arrest of the defendant was made by the city police department or in which a member of the city police department gives testimony the magistrate is in a position to have direct influence over whether a conviction results in that case. Thus, it would appear that the police chief has at least an indirect pecuniary or proprietary interest in the outcome of such criminal proceedings before the magistrate. It follows, then, that the magistrate violates the conflict of interest statute if the magistrate sits on a criminal case in which the spouse's police department is involved. See Attorney General Opinion I79-290, December 4, 1979.

The second conflict of interest arises from the Code of Judicial Conduct, which governs all Arizona judges, including town magistrates. Rules of the Supreme Court, Rule 45 "Compliance with the Code of Judicial Conduct" (found at the end of Canon 7).

Canon 3 of the Code is entitled "A Judge Should Perform the Duties of his Office Impartially and Diligently". Under A(1) of "Ajudicative Responsibilities", a judge should be unswayed by partisan interests. Under part C, "Disqualification", a judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned. Among the situations in which a judge should disqualify himself are cases where he has a personal bias or prejudice concerning a party, where he knows that his spouse has a financial or any other interest that could be substantially affected by the outcome of the proceeding, or where his spouse is an officer of a party to the proceeding or has an interest that could be substantially affected by the outcome of the proceeding.<sup>1/</sup>

The disqualification provisions on their face mandate that the magistrate disqualify himself or herself in any criminal case in which the city police department is involved,

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<sup>1/</sup>We note Canon 2 requires a judge to avoid even the appearance of impropriety. More specifically, Part B of Canon 2 forbids a judge from allowing his family relationships from influencing his judicial conduct or judgment.

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and when those provisions are read in conjunction with the Canon 2 mandate to avoid even the appearance of impropriety, there is no doubt but that the magistrate cannot sit on any such criminal case.

Yours sincerely,



BOB CORBIN  
Attorney General

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