



# Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert E. Corbin

June 1, 1987

Mr. Duane L. Shroufe, Acting Director  
Arizona Game and Fish Department  
2222 West Greenway Road  
Phoenix, Arizona 85023

Re: I87-079 (R87-036)

Dear Mr. Shroufe:

You have asked several questions relating to the marriage of employees and the application of Department of Administration Personnel Rule A.A.C. R2-5-207(B), which states:

An individual shall not be appointed or promoted to a position if an employee related within the third degree of affinity or consanguinity currently occupies a position under the same immediate supervisor.

Subsection (D) of that rule defines the relationships within the third degree of affinity (marriage) or consanguinity (blood) as specifically including spouses.

You first ask, if two employees under the same immediate supervisor get married, may they both remain in the same positions they held at the time of their marriage. A.A.C. R2-5-207(B) only prohibits one from being "appointed" or "promoted" to a position occupied by an employee related within the third degree of affinity or consanguinity. A.A.C. R2-5-101 contains the following definitions:

6. "APPOINTMENT" means the offer to and the acceptance by a person of a position in the State Service.

...

Mr. Duane L. Shroufe  
June 1, 1987  
I87-079  
Page 2

35. "PROMOTION" means a permanent change in assignment of a permanent status employee from a position in one class to a position in another class having a higher pay grade.

The marriage of one employee to another under the same supervisor does not constitute an appointment or promotion. Therefore, both spouses may remain in the positions they held prior to their marriage.

You next ask whether a transfer, demotion or detail to special duty is an "appointment" within the meaning of A.A.C. R2-5-207(B). A.A.C. R2-5-101 contains the following definitions:

18. "DEMOTION" means a change in the assignment of an employee for cause from a position in one class to a position in another class having a lower pay grade resulting from disciplinary action.

. . . .

20. "DETAIL TO SPECIAL DUTY" means the temporary assignment of a permanent employee to a covered position other than the employee's current position, in the same agency.

. . . .

52. "TRANSFER" means the movement of an employee from one position in the State Service to another position in the State Service in the same pay grade.

"Appointment," as defined earlier and used throughout the personnel rules, means the initial hiring into State Service. Nowhere in the rules is "appointment" used as a generic term for a new position or assignment. Furthermore, demotions, transfers and details to special duty are inherently different from appointments and promotions in that none of the former entail the "offer and acceptance" of a position. Demotion is a disciplinary action. Transfers can occur with or without an employee's request or consent. Details to special duty are by definition only temporary assignments of a permanent employee. Therefore, we conclude that "appointment" as used in A.A.C. R2-5-207(B) does not include transfers, demotions or details to special duty.

Mr. Duane L. Shroufe  
June 1, 1987  
I87-079  
Page 3

In addition, under the general rule of statutory construction, "[a] statute which enumerates the subjects or things upon which it is to operate will be construed as excluding from its effect all those not especially mentioned." Elfbrandt v. Russell, 97 Ariz. 140, 144, 397 P.2d 944, 946 (1965), reversed on other grounds, 384 U.S. 11, 86 S.Ct. 1238, 16 L.Ed.2d 321 (1966). Thus, since appointment and promotion are specifically mentioned, demotion, transfer and detail to special duty are excluded by omission.

Employees may be transferred, demoted or detailed to special duty to a position under the same supervisor whether they were previously working under the same supervisor or not. Transfers, demotions or details to special duty are neither appointments nor promotions, therefore, A.A.C. R2-5-207(B) does not prohibit such actions even though they result in spouses working together.<sup>1/</sup>

Sincerely,



BOB CORBIN  
Attorney General

BC:HRB:bl

---

<sup>1/</sup>It should also be noted that A.A.C. R2-5-207(C) provides the following exception to the employment-of-relatives rule:

The Director [of the Department of Administration] may grant exceptions to the prohibitions in Subsections A and B above if there are no other qualified candidates for the position at the location.

You note in your letter that the Game and Fish Department currently employs six married couples (twelve employees). If positions to be filled are in rural or remote areas, and an employee's spouse is the only qualified candidate at that location for a position under the same supervisor as the employee, the Department may seek an exemption from A.A.C. R2-5-207(B) from the Director of the Department of Administration.