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OGC 78-2446

18 April 1978

OGC HAS REVIEWED.

MEMORANDUM FOR:

FROM:

Office of General Counsel

25X1A

SUBJECT:

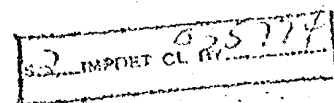
Nepotism: Employment of Spouses at Field Stations

1. You ask whether the Federal anti-nepotism law permits the wife of an Agency employee to be employed at the same field installation as her husband. You have presented for consideration several specific cases, some of which concern the wife of the COS or COB and others of which do not involve the wife serving under her husband in the chain of command.

25X1A 2. The Federal law prohibits a Federal employee from hiring or promoting a relative, advocating such hiring or promotion, or taking any discretionary actions which tend to increase the relatives' chances of being hired or promoted. 5 USCA 3110. [REDACTED] Included in the prohibition are such actions as referring a relative for consideration for hiring to a subordinate in the chain of command; writing fitness reports on a relative; or making informal written or oral performance assessments of a relative; and in general taking part in any "personnel actions which increase an employee's grade, pay, or rank, provided the action is discretionary...and is not based on a statutory requirement.... An action which increases an employee's relative standing in the Agency's organizational structure is subject to the restriction, even though no increase in grade or pay is involved." FPM Chapter 310, Subchapter 1, §1-2d(2). The policy behind the law is to avoid favoritism based on blood or marriage ties. The penalty provided for contravention of these prohibitions is total forfeiture of pay by the employee promoted or advanced.

3. Because of the legal considerations described above, a husband may have no part in hiring or recommending the hiring of his wife. All action in hiring her should be taken at least at the next higher level in the chain of command. In the case of the wife of a COS or COB, the wife should be rated by the same officer who rates the husband or perhaps by another officer senior in the chain of command to the husband. (In those cases where formal fitness reports are not used, the same principle applies to the informal recommendations which can influence future personnel actions affecting the wife.) The promotion board must be aware of the marriage relationship existing between the two employees in order that there be no inadvertent or indirect contact with the husband in assessing the wife's job performance.

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25X1A 4. In none of the cases you have presented has the husband recommended
the wife or had a part in the hiring processes. It is only necessary in the case 25X1A
of the wife of the COB [REDACTED] the wife of the COS [REDACTED] and the wife
25X1A of the COS [REDACTED] that the wife not be rated by the Chief, but by someone
senior in the chain of command. The wife of a DCOS [REDACTED] can be rated 25X1A
by the COS; the wife of the Administrative Officer, [REDACTED] and the wife of the
25X1A Communications Officer, [REDACTED] can be rated in normal fashion. 25X1A

25X1A 5. [REDACTED] dtd 9 January 1976, provides certain guidelines for the
sort of situation discussed above. We would propose certain modest revisions
of those guidelines, as indicated in the attachment, so as to conform them to
this opinion.

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Att.

RDC: kas

Distribution:

Original - Addressee

1 - EMPLOYEE RELATIONS & ACTIVITIES

1 - RDC Signer

1 - Chrono

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Approved For Release 2001/09/01 : CIA-RDP82-00804R000100070009-2

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