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## Coates' Canons Blog: It's All Relative

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Article: <https://canons.sog.unc.edu/its-all-relative/>

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When it's filing season for people seeking city or county offices, questions often arise about who can run. Can the spouse of a current board member run? What about the spouse of a current employee? How about the adult child of a sitting board member? These questions imply that there may be some type of conflict of interest when people who have close family or other relationships work for or serve the same unit of government.

### Elected Board Members

North Carolina statutes governing cities and counties do not include general provisions about relatives or spouses in public employment or board service. If a sheriff or register of deeds appoints a relative by blood (of nearer kinship than first cousin) or marriage, G.S. 153A-103 requires the county commissioners to approve the appointment. Some local governments may also have locally adopted policies regarding hiring or supervision of close relatives or spouses.

While local governments have authority to address this in the *hiring* process, they do not have authority to restrict who may run for office. As my colleague Bob Joyce pointed out in his blog post, the qualifications for elected office are set in the state constitution, and North Carolina case law makes clear that neither a local government nor the state legislature has any authority to limit or modify them.

So it's perfectly legal for spouses, relatives, and others who have close relationships of any other kind to stand for and serve in office together. Voters may have issues with this, but they can weigh in at the polls.

### Employees

There can be a legal conflict of interest when an employee, or a relative or spouse of an employee runs for office. This arises only if there is some financial relationship as well as a familial one. As discussed in my blog post here, North Carolina law (G.S. 14-234) makes it a misdemeanor for an employee or board member to derive a direct benefit from a contract with the unit of government he or she serves. So an employee who runs for office and gets elected, may have to choose between continued employment and board service. (Read the blog post to learn about a few exceptions that may apply.)

If a relative of an employee gets elected, there is no legal conflict unless the employee and the relative have a financial relationship such that the board member benefits from the employee's contract of employment. That will rarely be the case.

The situation is different for *wives* of employees. The criminal conflict of interest statute cited above prohibits contracts that directly benefit a public employee or official, *or their spouse*. A specific exception in the statute, however, exempts contracts between public agencies and the spouse of a public officer. G.S. 14-234(b)(3). So it's legal for the spouse of an employee to run for and serve on the governing board, and the employee doesn't have to quit his or her job.

A board member whose spouse is an employee may have conflicts when it comes to voting. As noted in a blog post here, statutes governing voting generally impose a duty to vote. Board members may be excused from voting on matters affecting their own financial interests, and must be excused from voting on quasi-judicial matters if financial interests or close personal or business relationships create a bias. Matters involving a board member's spouse could create a basis for excusing the board member from voting for either or both of these reasons.

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### Appointed Board Members

What about appointments to advisory boards? Can the governing board appoint a board member's spouse or relative to the library board? Can the planning director's mother serve on the board of adjustment? As in the other situations described above, there is no prohibition on these types of appointments. Local governments may adopt local policies governing board appointments, which could address these issues. In developing policies or making appointments, the board should consider the legal and practical issues that may arise when spouses and close relatives of board members or employees are appointed. As in the previous examples, these relate mostly to voting and contracting situations that involve financial benefit or bias in quasi-judicial decision-making.

### Appearance of Conflict or Bias

Questions about relatives and spouses working or serving together reflect concerns about conflicts of interest, objective decision-making in government, and diversity of opportunity for local government employment and service. On the other hand, a local community may miss out on the contributions of talented and dedicated public servants by adopting too stringent a policy about close relations and spouses serving in local government. Boards have authority to make policies balancing these concerns as they relate to employment and board appointment decisions. When it comes to running for office, however, the decision is in the hands of the candidate and the voters.

## Links

- [www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter\\_153a/ga\\_153a-103.html](http://www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter_153a/ga_153a-103.html)
- [canons.sog.unc.edu/?p=1599](http://canons.sog.unc.edu/?p=1599)
- [www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=14-234](http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=14-234)
- [canons.sog.unc.edu/?p=6196](http://canons.sog.unc.edu/?p=6196)