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June 10, 2015

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Mr. Michael McCreery  
United Counties Council of Illinois  
217 East Adams Street, Suite 101  
Springfield, IL 62701

**Re: County Hospital**  
**Our File: UNITCC-0601**

Dear Mike:

**Issue:**

May a county board member vote on matters involving a county hospital if the county board member has a spouse employed by the county hospital?

**Analysis:**

The county currently owns and operates a hospital authorized pursuant to Section 5/5-1005(6) of the Counties Code. The county board established a hospital committee composed of five (5) county board members who receive and review budgets, contract proposals, bids and related items. The hospital is managed by an independent management company who manages the hospital with the responsibility for employing and supervising the hospital staff. The hospital committee of the county board presents its recommendations to the full county board for review and approval. The county board is vested with the authority to adopt the annual budget and appropriate funds for the administration of the hospital. The funding of the hospital purportedly comes from fees generated by the hospital and other county funds.

The spouses of several county board members (also members of the hospital committee) are employed by the hospital. It is unknown whether such employees hold executive or managerial positions.

The Public Officers Prohibited Activities Act (50 ILCS 105/3 et seq.) prohibits (except in certain limited areas) a public officer from having an interest in contracts upon which he or she may be called upon to vote. Courts have held that it is not a violation of the Public Officers Prohibited

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Activities Act for the spouse of an office holder to be employed by the entity which the office holder served as a member of the public body (*People vs. Simpkins*, 45 Ill.App.3d 202). The Attorney General has opened that: "As a matter of law, one spouse does not presume to have a pecuniary interest in the contracts or earnings of his or her spouse . . . no such interest is presumed based solely upon familial relationship. . ." Ill. Atty. Gen. Op. No. I-93-019 (1993).

However, it is necessary to review the possibility that a common law conflict of interest may arise which may disqualify a person from voting on the issue. Under the common law conflict of interest rule, it is acknowledged that a member of a governmental body, if he or she has a personal interest in a matter that is coming before the public body, he or she must abstain from voting.

A critical issue that arises in the matter presented is the determination of whether or not the county board member is deemed to have a personal interest in voting on the hospital budget or the appropriation of funds to the hospital when ultimately the spouse of the county board member is the recipient of those funds via his or her employment at the hospital.

**Conclusion:**

The mere fact that the spouse of a board member is an employee of the hospital in and of itself does not create a conflict of interest and may only be an appearance of a conflict of interest; however, if the county board member is of the opinion that he or she may have a personal interest by virtue of his or her spouse being an employee of the hospital, then in such an event it is the obligation of the county board member to abstain from voting upon the specific matter. However, if a county board member elects to vote on the issue on the basis a conflict of interest does not exist, but at a future time a conflicts of interest is determined to have existed, the action by the county board on such issue could be declared void.

Sincerely,

GIFFIN, WINNING, COHEN & BODEWES, P.C.

  
Herman G. Bodewes

HGB:pa

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**Disclaimer:** This opinion was prepared by Giffin, Winning, Cohen & Bodewes, P.C. at the request of UCCI and is to be used solely by UCCI and its members. The State's Attorney is the attorney for the County. Legal advice, if requested, should be sought from the State's Attorney.