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ADVISORY OPINION
Case No. 97054.A, Employment of Relatives

To: [REDACTED]

Date: January 14, 1998

In a letter dated December 4, 1997, you stated that the City Department transferred three of its employees to different positions within the department in order to conform with Section 2-156-130 of the City's Governmental Ethics Ordinance, entitled "Employment of Relatives." You have asked the Board of Ethics for written verification that: 1) the transfers your department effected are required by Section 2-156-130 of the Ordinance; and 2) City employees cannot be "grandfathered in" to positions that would place them in violation of § 2-156-130 of the Ordinance. You said that the three transferred employees have filed grievances with the City under the relevant collective bargaining agreement covering them, seeking to return to their prior assignments and recoup certain costs incurred.

In October 1997, you contacted the Board of Ethics for advice on § 2-156-130 of the Ordinance. Board staff sent you copies of Case Nos. 89094.A and 91088.I., and a copy of the Ordinance itself. The City Department then began its own investigation, and based on this investigation and these cases, you said, made the following transfers:

1. Son 1, a [position] from the location, where his father, [name], is Superintendent;
2. Son 2, a foreman of [positions], from the location, where his father, [name], is Superintendent; and
3. Son 3, a [position], from Bureau X, where his brother, Son 4, is Superintendent.

You told staff that the City Department conducted its own investigation into whether the employment relationships prior to these transfers were in violation of § 2-156-130 of the Ordinance, and had found that they were. You then provided staff with documentation upon which the department relied.



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Based on a review of the information you presented, and your statements to Board staff, it appears to the Board, without independent investigation, that:

- 1) on at least 5 occasions, between November 13, 1996, and March 18, 1997, Father [redacted] signed missed punch reports and vacation approval forms with respect to Son 1 [redacted]; and
- 2) on at least 10 occasions, between November 6, 1996 and January 9, 1997, Father [redacted] signed missed punch reports and vacation approval forms with respect to Son 2 [redacted]; and
- 3) Son 4 [redacted] had assumed a position where he would have been required to sign such reports with respect to his brother, Son 3 [redacted].

The information you provided indicates that Son 1, a [position] [redacted], reported to a foreman of [positions] [redacted], who then reported to an Assistant Superintendent [redacted], who then reported to Father [redacted], the Superintendent [redacted]. Additionally, the information indicates that, Father [redacted], as Superintendent, had an Assistant Superintendent [redacted] reporting to him, who in turn had Son 2 [redacted], as foreman of [positions] [redacted], reporting to him.

The applicable section of the Ethics Ordinance, § 2-156-130 (a), states, in relevant part:

No official or employee shall employ or advocate for employment, in any City agency in which said official serves or over which he exercises authority, supervision, or control, any person (i) who is a relative of said official or employee
...

Section 2-156-010(w) of the Ordinance defines "relative" to include a brother, a child and a parent. In past cases, the Board determined that the term "employ" refers not only to the act of hiring but also to the "ongoing supervision" of an employee by a relative. Case No. 91088.I, p. 5. The purpose of the provision is to prohibit favoritism of all kinds towards relatives, not only in hiring decisions, but in a broader range of employment issues, including employee evaluations, promotions, and salary increases. Id. Thus, the Board has found that an employee who signed promotion documents and salary increases with respect to an employee supervises that employee, even if there are levels of supervisory employees between them. In Case No. 91088.I, the Board determined that an employee who signed a promotion order and a salary increase form with respect to his brother thereby exercised

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supervisory responsibility over him and violated the Ordinance, although he was not his brother's immediate supervisor.

Based on a review of the information presented by the City Department [redacted], and consistent with its determination in Case No. 91088.I, the Board, without independent investigation, agrees that [redacted] Father [redacted] violated § 2-156-130(a) of the Ordinance when he signed missed punch reports and vacation approval forms with respect to Sons 1 and 2 [redacted], as such conduct falls within the intended meaning of the prohibition against employing relatives. Given this conclusion, the Board also agrees with your department's decision that appropriate steps were required to bring the employees involved into compliance with the requirements of Section 2-156-130(a) of the Ordinance. Such steps might include effecting transfers or other personnel restructuring. However, the Ethics Ordinance does not specify what action is appropriate in such circumstances, and thus the Board cannot recommend or verify what specific actions are required or appropriate in these situations. That depends on matters particular to the City Dept. [redacted], including whatever policies the department has established with respect to two or more relatives working as employees in the department, and the records of the employees involved. And, while the information you presented does not indicate actual violations of the Ordinance involving the employment relationship of Son 4 [redacted] and his brother Son 3 [redacted], the Board recognizes that, whether or not there were such violations, § 2-156-450 of the Ordinance explicitly provides that the procedures and penalties provided in the Ordinance are supplemental, and do not limit the power of any City department to take administrative action it deems appropriate, or to adopt more restrictive rules or standards for its employees. A department may certainly make and administer policies or rules it believes are appropriate to ensure that its employees do not employ their relatives and thereby violate § 2-156-130(a) of the Ordinance. Moreover, the Board confirms that, as long as Father [redacted] and Son 4 [redacted] are no longer in positions where they would employ their relatives--by signing attendance records, vacation forms, and other employment documents with respect to their sons or brothers--and do not attempt to influence other employment matters with respect to their relatives, the actual violations of § 2-156-130(a) of the Ordinance involving these employees, as identified by your department, have been remedied, and potential future problems under this section minimized.

Last, the Governmental Ethics Ordinance contains no exceptions to the prohibitions of § 2-156-130 that are based on the longevity of City employment of the employees involved. If situations brought to the Board's attention by your department show violations of § 2-156-130, the employees involved must be brought into compliance

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with the Ordinance's requirements, regardless of how long the situations have existed. Thus, City employees cannot be "grandfathered in" to positions that place them in violation of this section of the Ordinance. However, as the Board has already stated, the decisions as to what actions are appropriate to bring such employees into compliance with the Ordinance are for the Department of Sewers to make.

The Board's conclusions are based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. If the facts presented here are incorrect or incomplete, please notify the Board immediately, as any change in the facts may alter our conclusions. Please be advised that other rules or laws may be applicable.

Please also be advised that, under Board Rules and Regulations, the identity of a person requesting an advisory opinion under the Ethics Ordinance, and the identity of any person whose conduct is involved in the set of circumstances described in the request, are confidential in accordance with § 2-156-380(1) of the Ordinance. Any of these persons may waive confidentiality by filing written notice with the Board.

RELIANCE: This opinion may be relied upon by any person involved: (1) in the specific transaction or activity with respect to which this opinion is rendered; and (2) in any specific transaction or activity that is indistinguishable in all its material respects from the transaction or activity with respect to which the opinion is rendered.

We appreciate your bringing this matter to our attention and your department's concern to abide by the standards embodied in the Ethics Ordinance. If you have further questions on this matter, please contact our office.


Darryl DePriest
Chair

NOTICE OF RECONSIDERATION

Reconsideration: This advisory opinion is based on the facts outlined in this opinion. If there are additional material facts or circumstances that were not available to the Board when it considered this case, you may request reconsideration of the opinion. A request for reconsideration must (1) be submitted in writing, (2) explain the material facts or circumstances that are the basis of the request, and (3) be received by the Board of Ethics within fifteen days of the date of this opinion.