

ADVISORY OPINION
CASE NO. 98045.A
Employment of Relatives

To: []
Commissioner

Date: October 21, 1998

You requested an advisory opinion from the Board of Ethics about whether the Governmental Ethics Ordinance prohibits your department from hiring the son of a current Department employee. It is our opinion that, because the son, [John], would be hired into a position over which your current employee, [Michael, the father,] would exercise supervisory authority, that hiring would place [Michael] in violation of the Ordinance. Our analysis of the facts under the relevant provision of the Ordinance is set forth below.

FACTS: Our staff spoke with [James], Assistant Commissioner of the Technical Division of your department. He explained that [Michael] is the Assistant Chief [] Inspector in the [Alpha] Section of the Technical Division of the Department []. The [Alpha] Section is responsible for inspecting [certain] systems in commercial, industrial, and multi-unit residential buildings throughout the City, and for reviewing and approving building plans and permits for the installation and operation of those systems. As Assistant Chief [] Inspector, [Michael] personally supervises the daily operation of the [] Section, including planning, assigning, supervising, and reviewing the work of all its personnel. He reports directly to [James].

The [] Section has six employees—the Assistant Chief [] Inspector, a Supervising [] Inspector, and four [] (field) Inspectors. Three of the six positions are currently vacant—the Supervising Inspector, and two of the four field inspector positions. Your department is in the process of filling the two field inspector positions, whose duties include making on-site inspections of [certain] units to ensure compliance with City [Alpha and related] codes.

[John, the son] was one of nine applicants for the two openings. [James] stated that, although the Assistant Chief Inspector and the Supervising Inspector would normally conduct the interviews, [Michael] was not involved in this interview process because his son was one of the applicants. [James] and one of the field inspectors conducted all of these interviews. [James] stated that [Michael] did not participate in any part of the interview or hiring process for these two openings, and did not advocate the

hiring of his son. He said candidates were scored according to standard qualification criteria, and they were offered the available openings in descending order by their rating scores. [John] ranked third among the applicants. [James] said the two available positions have been offered to the two top-ranking candidates; one has accepted, the other has not yet responded.

[James] said your department would like the Board to address two possible situations. First, he asked if the Ethics Ordinance prohibits the Department from hiring [John] in the opening now available if the other candidate does not accept the position. In this situation, he said, [Michael] would directly supervise his son in every aspect of his work. He assigns the field inspectors' inspections, monitors their work, reviews and approves their reports, and signs their time-sheets. It would not be possible in this instance for [Michael] to recuse himself from any aspect of this interaction with his son, [James] said, because there is currently no one else in the [Alpha] Section who could perform these duties.

Second, [James] said the Department hopes to open up two additional field inspector positions in the near future, once the Supervising Inspector position is filled. He asked if the Ordinance would prohibit the Department from hiring [John] as a field inspector at that time, once there is a supervisor in place between [Michael] and the field inspectors. The Supervising Inspector, once hired, would be responsible for performing many of the tasks the Assistant Chief Inspector now performs, including making staff assignments, reviewing the inspectors' reports, overseeing their review of building plans for installing [the] systems, supervising their on-site inspections, preparing productivity and status reports for the Assistant Chief Inspector's review, and signing the inspectors' time-sheets. However, [James] said that [Michael], as Assistant Chief Inspector, still would be responsible for personally monitoring the work of the field inspectors, and assigning specific tasks to each inspector on a daily or weekly basis. He said that, even in this situation, it would be very difficult for [Michael] to recuse himself completely from supervising his son because the [Alpha] Section is so small.

LAW AND ANALYSIS: The pertinent provision of the Ethics Ordinance is Section 2-156-130(a) under "Employment of Relatives," which states in relevant part:

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

The term "relative" as defined in Section 2-156-010(w) includes a child. The Board has determined that the term "employ" in this provision "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; see also Case No. 89094.A.) "The purpose of this section," the Board has said, "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." (Case No. 91088.I, p.5; see also Case No.

97054.A.) Thus, it is the Board's opinion that for the purposes of Ordinance Section 2-156-130(a), the term "employ" includes assigning, directing, inspecting and overseeing the work performance of an employee, signing City documents relating to an employee, and exercising the authority to make decisions or recommendations affecting an employee. Even where there are levels of supervisory personnel between two employees, if one employee performs these activities in relation to another employee, he or she still thereby supervises or "employs" that other employee under this provision of the Ordinance. (See, e.g., Case Nos. 91088.I and 97054.A.)

In both situations [James] described, [Michael] would be responsible for supervising his son if his son were to be hired as a field inspector for the Department. Regardless of whether [John] were to be hired before or after the hiring of the Supervising Inspector, [James] said that the duties of [Michael] still would include personally monitoring the work of the field inspectors, as well as assigning specific tasks to each inspector. He also stated that it would be very difficult for [Michael] to recuse himself completely from supervising his son. In the first instance, where there is no Supervising Inspector, [Michael] would not be able to recuse himself from any aspect of this supervision, [James] said, because there is no one else in the [Alpha] Section who could perform these duties. Even in the second instance, where a Supervising Inspector is present, [James] said [Michael] would likely not be able to recuse himself completely from supervising his son because the [Alpha] Section is so small.

DETERMINATION: Based on the facts presented, the Board determines that if your department were to hire [James] as a field [] Inspector while his father, [Michael] is employed as the Assistant Chief [] Inspector with the duties described in this opinion, [Michael] would be placed in violation of Section 2-156-130(a) of the Ethics Ordinance because he would not be able to avoid exercising supervisory authority over his son. This holds true whether the Supervising Inspector position is vacant or filled because of the specific facts in this case.

Our determination is based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. If the facts stated are incorrect or incomplete, please notify the Board immediately, as any change may alter our determination. Other laws or rules also may apply to this situation. We note that a City department may adopt restrictions that are more stringent than those imposed by the Ethics Ordinance.

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

Signature

Darryl L. DePriest

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Chair

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