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Board of Ethics

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January 8, 1992

C-O-N-F-I-D-E-N-T-I-A-L

[REDACTED]

Re: Case No. 91088.I
ADVISORY OPINION

Dear [REDACTED]:

As you know, the Board of Ethics has been investigating a complaint alleging that you improperly promoted relatives within the Bureau of A [REDACTED], Department of M [REDACTED], in violation of the City of Chicago's Governmental Ethics Ordinance. Please be advised that we have completed our investigation of these allegations and have concluded the following: (1) although you were not acting in compliance with the Ordinance when you signed the 1990 promotion order and the 1991 change of salary report for your brother, Mr. X [REDACTED], the Board is recommending to department officials that no sanctions be imposed against you; (2) because there is no evidence to substantiate the allegation that you were promoting your brother to [REDACTED], this charge has been dismissed; and (3) because there is no familial relationship between you and Mr. Y [REDACTED], the allegation that you promoted another relative is also dismissed.

The Board appreciates your cooperation in this matter. Additionally, we commend the department's officials for their prompt response to our request for documents and information. It was essential for the timely resolution of this investigation. This advisory opinion presents the facts of the case and the Board's analysis of those facts under the relevant provisions of the Ethics Ordinance.

FACTS: The complaint received by the Board alleged the following: (1) that last year you promoted your brother, Mr. X, from [REDACTED] to [REDACTED]; (2) that you were preparing to promote your brother further to the position of [REDACTED]; and (3) that you



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previously had promoted another relative, Mr. Y [REDACTED], within the Bureau of A [REDACTED] when you were head of the R [REDACTED] Section of the bureau.

Board of Ethics staff met with [REDACTED] of the M [REDACTED] Department, and [REDACTED] for the Bureau of [REDACTED], who confirmed: (1) that you and Mr. X are brothers; (2) that you were both working in the department's Bureau of A [REDACTED], yourself as [REDACTED] and Mr. X as [REDACTED]; and (3) that you were the head of that bureau.

[REDACTED] produced department records indicating that you were the head of the R [REDACTED] section of the Bureau of A [REDACTED] prior to [REDACTED] 1987, when you became [REDACTED] of A [REDACTED], which is the position you held until [REDACTED], 1992.

On [REDACTED], 1978, while you were still head of the [REDACTED] section, Mr. X was hired as a [REDACTED] at the level of [REDACTED] in the Bureau of A [REDACTED]. At this time, you were responsible for [REDACTED] with the bureau, while Mr. X worked with [REDACTED] under the supervision of [REDACTED], and [REDACTED]. In your written statement submitted to this office, you said there was no supervisory relationship between yourself and your brother at that time, and Mr. [REDACTED] confirmed this fact.

Department records show that between [REDACTED], 1980 and [REDACTED], 1986, Mr. X received the standard promotions within the Bureau of A [REDACTED] from the level of [REDACTED] to [REDACTED]. They also show that you did not participate in any of these promotions, a fact that was confirmed by [REDACTED], [REDACTED] of the Department of M. [REDACTED]

However, there are two department documents regarding Mr. X that you did sign after you became [REDACTED]. On [REDACTED], 1990, Mr. X was promoted within the Bureau of A [REDACTED] to the position of [REDACTED]. You signed the promotion order on [REDACTED], 1990. Approximately one year later, on [REDACTED], 1991, you also signed the Report of Salary Change form for Mr. X's pay increase.

In regard to Mr. X's promotion to [REDACTED], Mr. [REDACTED] told us that a departmental investigation of this incident showed that you had recused yourself from making any decisions with regard to your brother's promotion. The department provided us with written statements from yourself, and others [REDACTED] [REDACTED] which describe the circumstances of this promotion as follows.

Mr. X applied for the position of [REDACTED] as one of eight candidates, competing for four vacant positions. The list of candidates normally is submitted to the [REDACTED], who participates in evaluations and interviews of the applicants. When you received the referral list of candidates for the vacancies and saw your brother's name, you contacted your supervisor, [REDACTED], and recused yourself from the interview and evaluation process in an effort to avoid any conflict of interest. Mr. [REDACTED] confirmed this fact in a written statement to this office, saying that "[you] [REDACTED], at his own initiative, removed himself from the selection process as it related to the candidacy of his brother." The evaluation and selection process was undertaken by Mr. [REDACTED] and Mr. [REDACTED], both of whom have attested in their written statements that you had no involvement in the selection process. Mr. [REDACTED] added that you told him that you would accept their recommendations for the promotions without question.

Once the selections had been made by others in the department, you signed the promotion order for your brother. Both Mr. [REDACTED] and Mr. [REDACTED] explained to us that the standard procedures within the department required you [REDACTED] to sign the promotion forms as a routine administrative action. However, Mr. [REDACTED] noted that, because you are Mr. X's brother, you were disciplined by the department commissioner for signing the form pertaining to Mr. X.

The second document you signed was the Report of Salary Change pertaining to your brother's pay increase in 1991. According to Mr. [REDACTED], the administrative policy of the department called for you [REDACTED] to sign these reports and you did so in that capacity. He told us you had no discretionary authority in regard to pay increases for any employee. The increase in question was the standard annual pay raise and the recommendations for these came from the supervisors subordinate to you [REDACTED], in this case, Mr. [REDACTED]. You signed the 1991 form on the basis of his [REDACTED] certification

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of Mr. X's work efficiency. In regard to the pay increases Mr. X received from 1988 to 1990, Mr. [REDACTED] signed in your place on the salary change reports.

Regarding the general matter of your work relationship with Mr. X, it is clear that, [REDACTED], you had ultimate supervisory authority over the unit in which your brother was assigned. However, Mr. X has never been under your direct supervision. Through the period of time involved in this case, the levels of supervision in the Bureau of A [REDACTED] were as follows: the #5 [REDACTED] (the position Mr. X held until 1990) reported to a #4 [REDACTED] (the position to which Mr. X was promoted in 1990), who reported to a #3 [REDACTED], who reported to the #2 [REDACTED], who reported to you [REDACTED]. Once Mr. X was promoted to #1 [REDACTED], there were still three supervisory levels between you. Mr. X's direct supervisor was Mr. [REDACTED], the #3 [REDACTED] [who] reported to Mr. [REDACTED] the #2 [REDACTED], and he was the one who made any employment decisions directly relevant to Mr. X. All employee performance evaluations were reviewed and signed by Mr. [REDACTED], who reported in turn to you.

The second charge in this case alleged that you were preparing to promote your brother to the position of #3 [REDACTED]. The Board could find no evidence to indicate that any such promotion was planned. To the contrary, we found that the Department of M [REDACTED] was being [REDACTED] restructured [REDACTED] and that Mr. [REDACTED] was responsible for personnel changes. In the planned reorganization, [REDACTED] Mr. X had been slated to be in the "Bureau of B [REDACTED] [REDACTED]". Mr. [REDACTED] told us this would have been a lateral move for [REDACTED] Mr. X and his title would have remained that of #4 [REDACTED]. Further, according to the restructuring, the Bureau of B [REDACTED] is organizationally separate from the one in which you had been assigned. You were designated as [REDACTED] of the "Office of C [REDACTED]". Mr. [REDACTED] said there would have been no reporting relationship between you and your brother as of [REDACTED] as your reassignments then had been planned.

As a result of the complaint received by the Board, however, Mr. X was transferred by Mr. [REDACTED] on [REDACTED] 1991 to the Bureau of D [REDACTED], a bureau over which you had no

supervising control. Mr. [REDACTED] stated that this action was taken "to assure that there is no appearance of impropriety on the part of the Department."

As to the third allegation, that you previously had promoted another relative, Mr. Y [REDACTED], within the Bureau of A [REDACTED] when you were head of the [REDACTED] Section of the bureau, there is nothing to indicate that you are in any way related to Mr. Y [REDACTED]. Mr. [REDACTED] told us there is nothing in departmental files to indicate the existence of any familial relationship, and you have stated that Mr. Y [REDACTED] is in no way related to you.

LAW AND ANALYSIS: The applicable section of the Governmental Ethics Ordinance to this situation is section 2-156-130, "Employment of Relatives," which states in relevant part:

(a) 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, or (ii) in exchange for or in consideration of the employment of any of said official's or employee's relatives by any other official or employee.

Section 2-156-010(w) of the Ordinance defines "relative" to include a brother.

In a past decision, the Board determined that the term "employ" in section 2-156-130(a) refers not only to the act of hiring but also to the ongoing supervision of an employee by a relative (case no. 89094.A). The purpose of this section 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.

The facts show that you and Mr. X are in fact brothers, which makes you subject to section 2-156-130(a) of the Ethics Ordinance. They also reveal that you signed the order that promoted Mr. X to [REDACTED] in [REDACTED] 1990 and the form approving his salary increase in [REDACTED] 1991. The fact that you both worked in the same bureau does not, in itself, constitute a violation of the Ethics Ordinance. As previously stated, the Ordinance prohibits situations in which one relative supervises another relative, including involvement in employee evaluations, promotions, and salary increases. Once you became

head of the Bureau of [REDACTED], you moved into a position that was ultimately supervisory over your brother. It is clear that your work relationship with Mr. X was not that of an immediate supervisor. Nevertheless, the facts show that you exercised supervisory responsibility when you signed the two documents pertaining to him.

In regard to the signing of the promotion order, there is evidence to show that you attempted to comply with the requirements of the Ethics Ordinance on this issue and that you believed your recusal during the decision-making process was sufficient for such compliance. According to written statements submitted by yourself, Mr. [REDACTED], Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED], you had no involvement in the interview, evaluation or selection process regarding [REDACTED] Mr. X's promotion to [REDACTED]. This shows that you made a good-faith effort to comply with the Ordinance. However, it does not alter the fact that you signed the promotion form.

In regard to the signing of the salary change report, there is no evidence to show that you exercised any influence to affect the annual salary increases to be received by your brother. On the salary change reports submitted for Mr. X between 1987 and 1990, Mr. [REDACTED] signed off in your place. On the Report of Salary Change submitted for 1991, you signed the form on the basis of Mr. [REDACTED] certification of Mr. X's work efficiency. According to Mr. [REDACTED], you signed the form in your capacity as [REDACTED] and your involvement in the pay increase did not extend beyond the administrative act of signing the report. While your signing this form was not in compliance with the Ethics Ordinance, there is no evidence to indicate that you had any discretionary authority to affect the standard departmental salary increases, or that you attempted in any way to affect those increases in regard to your brother.

Aside from your signing of these two documents, which appears to involve only the execution of standard departmental procedures, there is no evidence to indicate that you ever participated in any employment decision concerning your brother. There is nothing to suggest that you ever reviewed or rated your brother in the annual employee performance evaluations conducted by the department, or that you attempted to influence those evaluations in any way. In view of these particular facts, the Board concludes that, while your conduct in signing the two forms in question violates the Ordinance, that violation is mitigated by the circumstances in this case, and therefore, no further action should be taken against you.

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Concerning the other two allegations made in this case--that you were preparing to promote your brother to the position of [REDACTED], and that you previously had promoted another relative, Mr. Y [REDACTED], when you were head of the [REDACTED] Section of the bureau--the Board finds no evidence to substantiate either claim. The facts as we know them indicate that (1) no further promotion of Mr. X had been proposed and (2) no familial relationship exists between yourself and Mr. Y [REDACTED]. Therefore, these charges have been dismissed by the Board.

CONCLUSION: The Board determines that your signing of the order on [REDACTED], 1990 that promoted your brother, Mr. X, to [REDACTED] within the Bureau of A [REDACTED] as well as your signing of the salary change report for Mr. X on [REDACTED], 1991, were violations of Section 2-156-130(a) of the Governmental Ethics Ordinance. However, based on the totality of circumstances in this particular case, it is the Board's recommendation to Department of [REDACTED] officials that no action be taken against you because you did not attempt to influence any departmental decisions in favor of your brother and, in fact, attempted to comply with the Ordinance by recusing yourself from the promotion process.¹

Thank you again for your assistance in helping to bring this matter to a close. We appreciate your willingness to follow the standards embodied in the Ethics Ordinance. We enclose the

¹ The Board's determination is based 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 opinion. Please be advised that other rules or laws may also be applicable.