

**ADVISORY OPINION
CASE NO. 01022.A
Employment of Relatives**

To: [John]
[Title, Department]

Date: May 23, 2001

In a letter dated May 15, 2001, you requested an advisory opinion from the Board of Ethics regarding the appointment of [Michael], currently serving as [supervisor] for the [department], to [manager] for the [department]. In your letter, you state that [Michael], as [manager], would be responsible for the administrative operations of the [department]. You further state that “[Michael] will not have any responsibility or authority in approving any personnel or payroll actions, including Missed Punch Reports, Vacations, Administrative Leave, Salary Increases and Disciplinary Hearings for any employee he may be related to by blood relation or marriage.”

After careful consideration of the information that you submitted and the relevant law, the Board concludes that, although the Governmental Ethics Ordinance does not prohibit the appointment or promotion of [Michael] or any other City employee to any position, Section 2-156-130 (Employment of Relatives) of the Ethics Ordinance does impose certain restrictions on the conduct of City employees, including [Michael], with regard to the employment and supervision of relatives. The Board advises the [department] and [Michael] to be mindful, in the exercise of his City duties and responsibilities as [manager], of these restrictions, which are discussed in detail below.

APPLICABLE LAW AND ANALYSIS:

Section 2-156-130(a). The provision of the Ethics Ordinance that is most relevant to your request is Section 2-156-130(a) which provides, in pertinent 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 (emphasis added.)

Section 2-156-010(w) of the Ethics Ordinance defines “relative” as:

... a person who is related to an official or employee as spouse or as any of the following, whether by blood or by adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister, half-brother or half-sister.

In past cases, the Board has determined that the term “employ” refers not only to the act of hiring, but also to the “ongoing supervision” of any employee by a relative. See Case No. 91088.I; Case No. 89094.A. “Ongoing supervision” includes a broader range of employment issues, including employee evaluations, promotions, and salary increases. Case No. 91088.I, p. 5; see also Case No. 89094.A, p. 3. In Case No. 91088.I, the Board found that an employee who signed promotion documents and salary increase forms with respect to his brother exercised supervisory responsibility over the brother, in violation of Section 2-156-130(a) of the Ethics Ordinance. A violation was found in that case even though: a) the employee was not the brother’s immediate supervisor (three supervisory levels existed between the employee and his brother); and b) the employee had no direct involvement in the actual selection of candidates to be promoted or in the recommendation for salary increases. Rather, the employee simply signed the promotion documents and salary increase forms as required by the administrative policies for his position in the department. Furthermore, in Case No. 97054.A, the Board concluded that a violation of Section 2-156-130(a) of the Ethics Ordinance occurred where a father signed missed punch reports and vacation approval forms with respect to his two sons.

The Board cases cited above illustrate the type of activities that are prohibited under Section 2-156-130(a) of the Ethics Ordinance. While the Board has actually found violations where one employee has made, taken part in, approved or attempted to influence employee performance evaluations, promotions, salary increases, employee attendance and vacations, with respect to a relative, these activities are not the only ones that may trigger a violation under Section 2-156-130(a) of the Ethics Ordinance. The Board has found that the purpose of Section 2-156-130(a) of the Ethics Ordinance is to *prohibit favoritism of all kinds towards relatives, not only in hiring decisions, but in a broader range of employment issues*. Case No. 91088.I, p. 5; see also Case No. 89094.A, p. 3.

In this case, you state that [Michael], as [manager], will not have any responsibility or authority in approving any personnel or payroll actions, including Missed Punch Reports, Vacations, Administrative Leave, Salary Increases and Disciplinary Hearings for any employee he may be related to by blood relation or marriage. While the activities that you set forth are certainly included in the type of activities that are prohibited under Section 2-156-130(a), they are not all-inclusive. In the Board’s advisory opinion of January 14, 1998 (Case No. 97054.A), which you reference in your letter, the Board found that Section 2-156-130(a) prohibits *all actions or activities, by City employees, involving the hiring or ongoing supervision of a relative of such*

employee. Therefore, we conclude that, under Section 2-156-130(a) and in accordance with the Board's opinions in past cases, [Michael] is prohibited not only from engaging in the activities that you list in your letter, but he is also prohibited from *taking part in or influencing any other actions or decisions related to the hiring or supervision of a relative, including the advocacy for employment of a relative in the [department].*

Sections 2-156-130(b) and (c). As [manager], [Michael] may well have or exercise "contract management authority" over various "persons." Because Section 2-156-130 of the Ethics Ordinance also extends to a City employee's responsibilities with respect to outside contractors, we want to advise you and [Michael] of additional provisions that may be relevant to your request. Sections 2-156-130(b) and (c) of the Ethics Ordinance impose the following restrictions on the conduct of City employees vested with contract management authority:

(b) No official or employee shall exercise contract management authority where any relative of the official or employee is employed by or has contracts with persons doing City work over which the City official or employee has or exercises contract management authority; and

(c) No official or employee shall use or permit the use of his position to assist any relative in securing employment or contracts with persons over whom the employee or official exercises contract management authority. The employment of or contracting with a relative of such a City official or employee by such a person within six months prior to, during the term of, or six months subsequent to the period of a City contract shall be evidence that said employment or contract was obtained in violation of this chapter.

Also, Section 2-156-010 of the Ethics Ordinance, Definitions, provides, the following definitions:

(g) "Contract management authority" means personal involvement in or direct supervisory responsibility for the formulation or execution of a City contract, including without limitation the preparation of specifications, evaluation of bids or proposals, negotiation of contract terms or supervision of performance.

(r) "Person" means any individual, entity, corporation, partnership, firm, association, union, trust, estate, as well as any parent or subsidiary of any of the foregoing, whether or not operated for profit.

Therefore, under Section 2-156-130(b), [Michael], as a City employee, is prohibited from exercising contract management authority (as defined above) over City work if the person doing that work either *employs* or *contracts with* a relative of [Michael]. Under 2-156-130(c), [Michael] is also prohibited from using his City position to help a relative in gaining

employment or contracts with persons over whom he exercises contract management authority. Further, if a relative of [Michael] were to become employed by, or contract with, a person over whom he exercises contract management authority either during the pendency of the person's City contract or six months before or after the contract's term, that would be evidence that [Michael] used his position to assist a relative, in violation of Section 2-156-130(c). (See Case No. 95027.A, pp. 3 and 4.)

DETERMINATION: The Board determines that, although the Governmental Ethics Ordinance does not prohibit the appointment or promotion of [Michael] or any other City employee to any position, it does impose certain restrictions on the conduct of City employees, including [Michael], with regard to the employment and supervision of relatives. The Board advises the [department] and [Michael] to be mindful, in the exercise of his City duties and responsibilities, of these restrictions.

Our determination is not necessarily dispositive of all issues relevant to this situation, but 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. Be advised that City departments have the authority to adopt and enforce rules of conduct that may be more restrictive than the limitations imposed by the Ethics Ordinance.

Please be advised that, pursuant to Rule 3-8 of the Board's Rules and Regulations, a copy of this advisory opinion is being forwarded to the subject of this opinion, [Michael].

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
Chair