

Abstract of Advisory Opinion No. 02-13

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Advisory Opinion of PUBLIC OFFICER, Deputy City Manager.

This matter came before the Nevada Commission on Ethics (hereinafter the "Commission") for hearing on September 5, 2002, on the confidential request for advisory opinion filed by Public Officer, a Deputy City Manager, pursuant to NRS 281.511, Subsection 1.

The matter was properly noticed as a confidential matter and the hearing was closed pursuant to NRS 281.511, Subsection 5. Public Officer appeared by telephone and was sworn and presented testimony. The Advisory Opinion is confidential pursuant to NRS 281.511, Subsection 5(c).

With regard to the relevant facts provided herein, Public Officer requests the Commission's advisory opinion determining whether he would be in violation of Nevada's anti-nepotism law (NRS 281.210) or any other provision of Nevada's Code of Ethical Standards if his son were to be hired by City's Department X.

The Commission, after hearing testimony and considering the evidence presented herein, makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Public Officer is a Deputy City Manager for City. He was appointed to that position by, serves under the direction and control of, and reports directly to the City Manager.
2. Deputy City Managers for City are appointed by the City Manager subject to approval by the City Council. City presently employs more than one Deputy City Manager.
3. The City Manager is appointed by and serves under the direction of the City Council.
4. City employs many people in several departments. Department directors are appointed by the City Manager and report directly to a Deputy City Manager.
5. Public Officer is a Deputy City Manager for City. In that capacity, Public Officer has supervisory authority over some of City's departments, including the Department of Human Resources. The Department of Human Resources administers recruitment and employment policies for City, including hiring and firing of city employees. As a Deputy City Manager, Public Officer has final hiring and firing decision authority only to the extent of the departments for which he has direct supervisory authority. In his capacity as a Deputy City Manager, Public Officer has no influence over hiring and firing decisions in departments other than those he directly supervises.
6. Department X is one of the departments under the supervisory authority of another Deputy City Manager. Public Officer has no direct supervisory authority (and no direct hiring or firing authority) over Department X.
7. Public Officer's son is presently an applicant for a position with Department X. He has also applied for a similar position with other entities.
8. Employees for Department X are recruited and evaluated pursuant to competitive examination rules and regulations adopted by the Board of Civil Service Trustees and administered by the Department of Human

Resources. Applicants who complete a City employment application and meet the objective minimum qualifications for employment with City and Department X are approved by the Department of Human Resources to test for the requested position. The Department of Human Resources administers the written test for candidates and processes the candidates' testing scores. Only those candidates who receive the highest cumulative scores on the objective written tests and interviews are qualified to proceed in the process. Qualified candidates are eligible to interview for open or new positions in Department X. The Director of the Department X and division chief select the successful candidates to fill positions. Public Officer has no involvement in the testing or interviewing of candidates for positions in Department X.

9. A final decision to terminate the employment of a Department X employee is made by the Director of Department X and executed by the Department of Human Resources. Because Department X is under the supervisory authority of another Deputy City Manager, Public Officer, in his position as Deputy City Manager over the Department of Human Resources, is not personally involved in the process of terminating the employment of an employee of Department X nor does he sign any termination papers.

10. Members of the Board of Civil Service Trustees are appointed by the City Council.

11. Since becoming aware of his son's status as a candidate for employment with Department X, Public Officer has notified the City Manager and has avoided interaction with Department X and with the Department of Human Resources relative to the recruitment process for applicants for positions with Department X.

CONCLUSIONS OF LAW

1. Public Officer is a public officer as defined by NRS 281.005 and NRS 281.4365.

2. The Commission has jurisdiction to render an opinion in this matter pursuant to NRS 281.511, Subsection 1, and NRS 281.521.

WHEREFORE, on motion duly made, seconded, and approved by majority vote,^[1] the Commission renders the following Opinion:

OPINION

NRS 281.210 (the "anti-nepotism" statute) prohibits an enumerated class of persons in public positions from employing a relative within the third degree of consanguinity or affinity. The prohibition applies to those with effective hiring power, regardless where the ultimate hiring power lies, and extends to reemploying and recommending for employment as well as actually employing.^[2]

As a Deputy City Manager for City, Public Officer is within the enumerated class of persons in a public position identified in NRS 281.210. Further, Public Officer and his son are related within the third degree of consanguinity.

Therefore, under the particular facts and circumstances discussed herein, and specifically based upon the fact that in his position as a Deputy City Manager Public Officer has direct supervisory authority over the Department of Human Resources, the hiring of Public Officer's son as an employee of Department X for City would violate the provisions of Nevada's anti-nepotism law, NRS 281.210.

NOTE: THE FOREGOING OPINION APPLIES ONLY TO THE SPECIFIC FACTS AND CIRCUMSTANCES DEFINED HEREIN. FACTS AND CIRCUMSTANCES THAT DIFFER FROM THOSE IN THIS OPINION MAY

RESULT IN AN OPINION CONTRARY TO THIS OPINION. NO INFERENCES REGARDING THE PROVISIONS OF NEVADA REVISED STATUTES QUOTED AND DISCUSSED IN THIS OPINION MAY BE DRAWN TO APPLY GENERALLY TO ANY OTHER FACTS AND CIRCUMSTANCES.

DATED: December 11, 2002.

NEVADA COMMISSION ON ETHICS

By: /s/ TODD RUSSELL, Chairman

[1] The vote was 4-3.

[2] See, NRS 281.210 and Attorney General Opinion (AGO) 147 (10-1-1973).