



CITY OF PHILADELPHIA

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Philadelphia Board of Ethics Confidential Opinion No. 2007-002

Re: Appointment of a close relative to an unpaid City position

The Board of Ethics was asked for confidential guidance on whether it would be permissible for a City official to appoint a close relative to an unpaid position in the City.

Because Philadelphia does not have a specific rule against nepotism, the question is whether the appointment of this relative to the official position would violate the City's conflict of interest rule, found in §20-607 of the City's Ethics Code. That rule prohibits City officials from making a decision in their official capacity that would affect either their own financial interest, or the financial interests of certain close relatives (parents, children, siblings, spouses, and like in-laws). Since the proposal is that the appointee would not receive compensation, the relative would have no direct financial interest in being appointed. Therefore, the Board concluded that it would not violate the City's conflict of interest rule in §20-607 of the Ethics Code if the official were to appoint his/her relative.

Similarly, the conflict of interest provision of the State Ethics Act requires a "private pecuniary benefit" (to either the relative or his/her employer) of official action to be a prohibited conflict. We concluded that the State Act also would not be violated by this appointment. Please note that the State Ethics Act provides that: "A public official of a political subdivision who acts in good faith reliance on a written, nonconfidential opinion of the solicitor of the political subdivision . . . shall not be subject to the penalties provided for in [the Act]." 65 Pa.C.S. §1109(g). Therefore, in order to be assured of this protection, we advised the requestor that he/she may wish to seek a nonconfidential opinion of the Solicitor or an opinion directly from the State Ethics Commission.

The Board concluded that, under the facts of this particular matter, any benefit to the relative or to the relative's employer in increased prestige from the proposed appointment was not sufficient to constitute a "financial interest," without ruling out that under the right circumstances, the fact of an appointment itself might have that effect. The Board advised, however, that, although the appointment of this relative would not violate the City's conflict of interest provision, it could appear to the public that the appointment

was an improper exercise of authority because “you would be making a decision in your official capacity that could enhance your [relative’s] career.” Even though the ethics laws do not restrict actions of a City official that “have the appearance of impropriety,” City officials have been advised for decades to avoid taking such actions whenever possible, even though they may not violate a particular rule.

In 1982, the former Mayor’s Advisory Ethics Board adopted a “Guide to Ethical Conduct for City Officers and Employees,” which was published in the Board of Ethics addendum to the volume 1982 City Solicitor’s Opinions at page 306. The Guide states: “[I]mproper appearances may be as or more detrimental than actual conflicts to the public’s confidence in City government. Situations of apparent impropriety should be avoided wherever possible.” This advice has been quoted in several more recent City Solicitor’s Opinions. See, e.g., Opinion No. 97-15, 1997-1999 City Solicitor’s Opinions at page 368; Opinion No. 99-05, 1997-1999 City Solicitor’s Opinions at pages 327-328. The advice applies particularly to the issue at hand.

A City official’s appointment of a close relative to a position (whether they are compensated or not), invariably creates the perception that the person is being selected based upon their relationship to the appointing official rather than upon their qualifications, regardless of how well-qualified they may be. Therefore, if asked, the Ethics Board would publicly recommend that the City adopt an anti-nepotism policy¹ that would prohibit officials from either hiring close relatives as City employees or appointing them to any paid or unpaid board or commission. Such a policy would enhance public confidence in City government by ensuring that all City appointments are made with the public’s best interests in mind.

By the Board:

Richard Glazer, Esq., Chair
Richard Negrin, Esq., Vice-Chair
Phoebe A. Haddon, Esq., Member
Stella M. Tsai, Esq., Member

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¹ Either through Administration policy or legislation or both, as recommended in the “Ethics Agenda” of the Committee of Seventy.