



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Yvonne P. Hamilton, Town Clerk
Town of Bay Harbor Islands

FROM: Nolen Andrew Bunker, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2023-104, Section 2-11.1(g), Exploitation of official position prohibited.

DATE: August 25, 2023

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade County Commission on Ethics and Public Trust (“Ethics Commission”) and requesting our guidance regarding a possible conflict of interest based on the potential employment by the Town of Bay Harbor Islands of an immediate family member of a sitting Town Councilmember.

Facts

The Town of Bay Harbor Islands (“BHI”) operates an After-School Recreation Program that provides academic, sports, arts, music, and language activities to children from kindergarten through the eighth grade.¹ You advised that The Children’s Trust awarded BHI a grant to run the After-School Recreation Program with BHI contributing some matching funds. You further advised that the After-School Recreation Program takes place at the Bay Harbor Island Community Center. With regard to hiring, you advised that the Town Manager makes the hiring decisions for the After-School Recreation Program,² but that the Town Educational Program Director is the supervisor of the After-School Recreation Program and its employees. You further advised that the BHI Town Council does not supervise the After-School Recreation Program; rather, their involvement is limited to its creation and the renewal of funding.

¹ See <https://www.bayharborislands-fl.gov/278/After-school-Recreation-Program> (last visited Aug. 21, 2023).

² The BHI Town Manager is “responsible for hiring, supervision, and removal of all Town employees” Town of Bay Harbor Islands Charter § 3.01(b)(2).

You advised that the daughter of a current BHI Town Councilmember has applied for employment with the BHI After-School Recreation Program. Specifically, she has applied to a position with the Program as a Program Aide/Teaching Assistant.

Issue

Whether there is a prohibited conflict of interest that would prevent the Town of Bay Harbor Islands from employing the child of a current Town Councilmember as a Program Aide/Teaching Assistant with the Town's After-School Recreation Program.

Analysis

The Miami-Dade County Conflict of Interest and Code of Ethics Ordinance ("County Ethics Code") does not explicitly address nepotism. *See* RQO 01-78; INQ 22-89; INQ 22-03.

However, Section 2-11.1(g) of the County Ethics Code provides that no municipal councilmember³ "shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others," unless expressly permitted by ordinance. This section has been interpreted to mean that municipal councilmembers must avoid any action hiring, promoting, or advocating for the advancement of an immediate family member. *See* INQ 22-89 (citing RQO 99-24). The municipal hiring decision must be based on objective factors and not on the familial connection. *See* INQ 18-148 (no conflict of interest when the Village Manager of North Bay Village sought to hire a distant relation as Assistant Village Manager so long as the hiring was based on objective factors and not the familial connection).

In practice, the City of Miami Police Department could hire the daughter of one of their Assistant Chiefs so long as the Assistant Chief took no affirmative action to hire, promote, or advocate for the advancement of his daughter. *See* INQ 06-67. Similarly, the Miami-Dade County General Services Administration could hire the nephew of another County employee working in the same division so long as the County employee did not have any role in the recruitment process and did not exercise any supervisory authority over his nephew once the nephew was hired. *See* RQO 99-24; *see also* INQ 18-174 (the Miami-Dade County Water and Sewer Department ("WASD") could hire the spouse of a current WASD employee so long as neither spouse had supervisory authority over the other).

Nevertheless, "close attention must be given to situations which may create an appearance of impropriety affecting the public trust in government." INQ 22-03. It has been opined that close family members should not work on the same project or be called to "directly or indirectly evaluate or supervise the other's work," because even the suggestion that a close family member could have

³ The County Ethics Code "constitute[s] a minimum standard of ethical conduct and behavior for all municipal officials and officers . . ." County Ethics Code § 2-11.1(a). References in the County Ethics Code "to County personnel shall therefor be applicable to municipal personnel who serve in comparable capacities to the County personnel referred to." *Id.*

exercised authority to afford special treatment or attention to another family member could create an appearance of impropriety that should be avoided. INQ 22-89.

Here, it does not appear that there is any prohibited conflict of interest that would prevent the BHI Town Manager from hiring the daughter of an active Town Councilperson as a Program Aide/Teaching Assistant with the Town's After-School Recreation Program because the Town Councilperson is not involved in the hiring process and will have no supervision over their child specifically or the Town's After-School Recreation Program generally. *See* RQO 99-24; INQ 22-89; INQ 06-67. However, the Town Manager should make his or her hiring decision based on objective factors and may not consider the familial connection. *See* INQ 18-148.

Nevertheless, while the County Ethics Commission only has jurisdiction to interpret and opine on the County Ethics Code (and other ordinances not pertinent to this inquiry), Florida law must not be ignored. Specifically, Florida's anti-nepotism law provides that:

A public official may not appoint, employ, promote, or advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the agency in which the official is serving or over which the official exercises jurisdiction or control any individual who is a relative of the public official.

Fla. Stat. § 112.3135(2)(a). A "public official" includes any municipal officer with the authority:

to appoint, employ, promote, or advance individuals or to recommend individuals for appointment, employment, promotion, or advancement . . . including the authority as a member of a collegial body to vote on the appointment, employment, promotion, or advancement of individuals.

Fla. Stat. § 112.3135(1)(a), (c). A "relative" includes a parent or a child. *See* Fla. Stat. § 112.3135(1)(d). However, the "[m]ere approval of budgets shall not be sufficient to constitute 'jurisdiction or control . . .'" Fla. Stat. § 112.3135(2)(b); *see also* Fla. Ethics Comm'n Op. 18-17 (holding that Florida's anti-nepotism law did not prohibit the General Manger of a municipal utility board from hiring the son of the municipal utility board's chairperson where the chairperson did not have hiring authority and did not participate in the selection process).

Accordingly, in light of the applicability of Florida law and the fact-specific nature of its application, it is strongly recommended that you review this matter with your Town Attorney.

Opinion

Based on the facts presented here and discussed above, **no prohibited conflict of interest would arise under the County Ethics Code if the Town Manager, through an independent selection process using objective factors, decides to hire the daughter of an active Town Councilperson as a Program Aide/Teaching Assistant with the Town's After-School Recreation Program,** provided that the Town Councilperson has no role in the selection process and does not make any

attempt to influence the Town Manager's hiring decision. *See* RQO 99-24; INQ 22-89; INQ 18-148; INQ 06-67.

Additionally, it is further **strongly recommended that you review this matter with the Town Attorney** to determine whether the State's anti-nepotism law will permit the Town Manager to hire the daughter of an active Town Councilperson as a Program Aide/Teaching Assistant for the Town's After-School Recreation Program.

This opinion is based on the facts presented. If these facts change, or if there are any further questions, please contact the above-named Staff Attorney.

For an opinion regarding Florida ethics law, please contact the Florida Commission on Ethics, P.O. Drawer 15709, Tallahassee, FL 32317, phone number (850) 488-7864, <http://www.ethics.state.fl.us/>.

INQs are informal ethics opinions provided by the legal staff after being reviewed and approved by the Executive Director. INQs deal with opinions previously addressed in public session by the Commission on Ethics or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Miami-Dade Commission on Ethics and Public Trust when the subject matter is of great public importance or where there is insufficient precedent. While these are informal opinions, covered parties that act contrary to the opinion may be referred to the Advocate for preliminary review or investigation and may be subject to a formal Complaint filed with the Commission on Ethics and Public Trust.