



CITY OF HAMILTON, OHIO

No. 119

ADMINISTRATIVE DIRECTIVE

Effective Date: 4-8-16

Supersedes: No. 119 dated 2/1/05

Approved by: Joshua A. Smith,
City Manager

SUBJECT: NEPOTISM

PURPOSE: To establish a policy to ensure that hiring and supervision in the City of Hamilton is conducted in a manner parallel to the Ohio Ethics Law and related statutes in the Ohio Revised Code.

REFERENCES: Ohio Ethics Commission Information Sheet #1 (Attached)
Ohio Ethics Commission Bulletin – Summer Jobs & Nepotism Restrictions (Attached)

GENERAL: Definitions. For purposes of this directive, the following definitions apply:

- a. Public official means **any** person, paid or unpaid, and regardless of how much money is earned:
 - i. Who is **elected** or **appointed** to an office, or is an **employee** of the City of Hamilton. City employment includes part-time interns, paid student help, temporary, intermittent and seasonal employees.
- b. Closely related by blood or marriage is defined to include, but is not limited to spouse, children (whether dependent or independent), parents, grandparents, siblings, aunts, uncles, in-laws, step-children, step-parents, step-grandparents, step-siblings, step-aunts, step-uncles, and other persons related by blood or marriage who reside in the same household.
- c. Significant relationship means people living together as a spousal or family unit when not legally married or related where the nature of the relationship may impair the objectivity or independence of judgment of one individual working with the other.
- d. Business associates are defined as parties who are joined together in a relationship for business purposes or acting together to pursue a common business purpose or enterprise.
- e. Supervision means the direct ability or power to effectively recommend the hire, transfer, suspension, layoff, recall, promotion, discharge, assignment, reward, discipline or settlement of disciplinary grievances or appeals of other City employees, including the authority of a board or committee to order personnel actions affecting the job.

1. Policy.

- a. All City officials and employees are prohibited from authorizing or using the authority or influence of his or her position to secure the authorization of employment or benefit (including a promotion or preferential treatment) for a person closely related by blood, marriage or other significant relationship including business association. This includes, but is not limited to the following circumstances:
 - i. Hiring
 1. No elected or appointed official of the City of Hamilton shall authorize or use the authority or influence of their positions to secure authorization of the employment of a person closely related by blood, marriage or other significant



relationship, including business association, to serve in any position within city government.

2. Except as provided in Section (iii), no City official or employee serving as city manager, deputy city manager, assistant city manager, department director, assistant director, division superintendent, assistant superintendent or any person of equivalent rank shall have in the employ of that persons department or division any person closely related by blood, marriage or other significant relationship including business association.
3. No employee in the personnel area shall process any personnel actions or use the authority or influence of that employee's position to secure the employment of a person related by blood, marriage or other significant relationship, including business association.

ii. Supervision

1. Except as provided in Section (iii), no City official or employee shall supervise any person closely related by blood, marriage or other significant relationship including business association.
2. Should a supervisory conflict arise, the department shall work expeditiously to relocate or transfer one of the individuals to eliminate the conflict to the extent permitted by law and/or collective bargaining agreement. This relocation or transfer should be to a comparable position with minimal inconvenience for the transferring employee.

iii. Exceptions

Sections (i) and (ii) shall not apply to those circumstances in which:

1. A marital or other significant relationship develops subsequent to both the City officials and/or employees employment with the department. (In this instance, the department should make reasonable attempts to avoid a supervisory conflict).
2. The City official or employee is employed by the department prior to the appointment of a person closely related by blood, marriage or significant relationship to the position of city manager, deputy city manager, assistant city manager, director, assistant director, division superintendent or assistant superintendent (e.g., a husband is employed at the City and his wife is offered the appointment of department director. Neither the husband nor the wife must leave the department. Although the department should make reasonable attempts to assure that the wife does not directly supervise her husband).
3. A person closely related by blood, marriage or significant relationship obtains employment with the same department as the result of bumping, displacement, recall or some other nondiscretionary personnel action.
4. The City official or employee served in a capacity other than city manager, deputy city manager, assistant city manager, director, assistant director, division superintendent or assistant superintendent at the time the person closely related by blood, marriage or significant relationship was hired by the department (e.g., a sister and brother are both employed by a department and the sister achieves a



promotion. A conflict does not exist provided the sister does not supervise her brother).

5. A person closely related by blood or marriage or who has other significant relationship including business association with the assistant director, division superintendent, assistant superintendent or any person of equivalent rank is not prohibited from working in the same department as long as the assistant director, division superintendent, assistant superintendent or any person of equivalent rank does not participate in the hiring of the employee and has no direct line of supervision.

2. Procedures

- a. Each department and the Department of Civil Service & Personnel are responsible for requesting nepotism information and accurately documenting any information received by the applicant/transferring employee.
- b. Every personnel action form for a new hire, promotion or transfer posted must be reviewed to ensure compliance with this directive.

3. Discipline

- a. Any public official that is responsible for hiring a family member can be charged with a felony offense.
- b. Any public official that uses their authority to secure employment/promotion with regards to a family member can be charged with a misdemeanor offense.
- c. If a person is hired in violation of this policy/Ethics Law, the employment contract is void and unenforceable, and the person can be removed from employment at any time.



OHIO ETHICS COMMISSION

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RESTRICTIONS ON NEPOTISM OR HIRING FAMILY MEMBERS: Ethics Commission Information Sheet # 1

I. Introduction

The Ohio Ethics Law and related statutes are found in Ohio Revised Code (R.C.) Chapter 102. and Sections 2921.42 and 2921.43. These laws generally prohibit public officials and employees from misusing their official positions for their own personal benefit or the benefit of their family members or business associates.

The Ethics Law applies to all people who serve as officials and employees for public agencies in Ohio. “Public agencies” include state departments, boards, and commissions, counties, cities, villages, townships, school districts, public colleges and universities, public libraries, port authorities, and all other public entities.

The Ohio Ethics Commission was created to administer, interpret, and assist in the enforcement of the Ethics Law for all officials in the state, except members and employees of the General Assembly and judicial officers and employees.¹ In this information sheet, the word “official” indicates any person who serves a public agency, whether elected, appointed, or employed.

II. Purpose of this Information Sheet

The Commission prepared this information sheet to explain the Law as it applies to situations where a relative of an official seeks a job with the public agency she serves.

III. Summary of the Law

The Ohio Ethics Law and related statutes prohibit an official from:

- Authorizing the employment of a family member; and
- Using the authority or influence of her public position to secure authorization of the employment of a family member.

An official is prohibited from hiring a family member in any employment position, including a full-time, part-time, temporary or permanent position, a position in the classified or unclassified civil service, or a non-civil service position.

In most situations, the Ohio Ethics Law and related statutes do not prohibit family members from being employed by the same public agency, as long as no official has secured a job, or job-related benefits, for her family member.

IV. Prohibition Against Authorizing a Family Member’s Employment

R.C. 2921.42 (A)(1) prohibits a public official from authorizing the employment of a family member. A “public official” is any elected or appointed officer, or employee, of the state or any political subdivision of the state.

A “member of [an official’s] family” includes the following relatives, regardless of where they reside: (1) spouse; (2) children (whether dependent or not); (3) siblings; (4) parents; (5) grandparents; and (6) grandchildren.² It also includes any other person related by blood or by marriage and living in the same household.³

An official has “authorized” the employment of a family member when the employment could not have been awarded without the approval of the official. In other words, under this section, an official is prohibited from making the final decision about whether a family member should be hired. For example, an official is prohibited from voting to hire a family member.⁴

If the official makes the final hiring decisions for the public agency she serves, her family members cannot be employed by the public agency. For example, a county office holder cannot hire a family member and cannot delegate the authority to hire her family members to a subordinate employee, which means that her family members cannot be hired by her office.⁵ However, a person who worked in the office before her relative is elected is not prohibited from continuing to work for the office, as long as the terms and conditions of her employment are not changed through promotion or other actions described below.

V. Using Position to Secure Job

An official is also prohibited, by R.C. 2921.42(A)(1) from using the “authority or influence of” her public position to secure a job for a family member.⁶ Even if an official abstains from decisions, the law prohibits the official from discussing, recommending, or otherwise using the prestige of her office,

formally or informally, to get a family member a job.⁷

R.C. 102.03(D) also prohibits an official from using her position to secure a job for a family member.⁸ R.C. 102.03(D) and (E) prohibit an official from using her influence with other public officers or employees, especially subordinates, to persuade them to hire her family member.⁹

VI. Using Position After Employment

The prohibitions in R.C. 2921.42(A)(1) and 102.03(D) continue after an official’s family member has been employed.

R.C. 2921.42(A)(1) prohibits an official from participating in any decision, or using her position to secure any decision, that affects the continuation, implementation, or terms and conditions of a family member’s employment.¹⁰ For example, an official is prohibited from participating in matters related to the renewal, modification, or termination of a family member’s public employment.¹¹

R.C. 102.03(D) prohibits an official from participating, formally or informally, in any matter that directly affects a family member’s employment.¹² For example, R.C. 102.03(D) prohibits an official from securing any employment-related benefits for a family member.

For example, a public official is prohibited from participating in matters affecting her family member’s employment including: (1) changes in compensation or benefits; (2) assignment of duties; (3) evaluations; and (4) actions involving promotions, disciplinary actions, lay-offs, and removal.¹³ R.C. 102.03(D) also prohibits an official from influencing the decisions or

actions of other officials or employees, particularly subordinates, regarding a family member's job with the public agency or any job-related benefits.

VII. Actions That Are Not Prohibited

R.C. 2921.42(A)(1) and 102.03(D) do not prohibit an official from participating in certain matters in which a family member has an indirect interest or from which a family member may indirectly benefit.

A. Approval of Union Contract: An official is not prohibited from approving a union contract when her relative is a member of the union, unless the relative serves as a union officer, board member, or on the union negotiating team or the official is covered by health insurance under the contract.¹⁴

B. Matters Affecting a Class: The law generally does not prohibit a public official from voting on an ordinance or resolution to fix the compensation of a class of employees, one of whom is a relative of the official. However, an official is prohibited from voting on an ordinance setting compensation for employees if the ordinance: (a) establishes compensation on a basis other than membership in the class of employees; (b) affects the family member's compensation in a differential manner than other members of the class; or (c) secures, renews, modifies, or renegotiates the terms of the family member's job.¹⁵

C. General Appropriations: The law also does not prohibit an official from participating in a general budgetary appropriation that includes money to fund a family member's compensation and benefits, or from participating in budgetary appropriations to a department that employs a family member. However, the appropriation

cannot provide the official or employee with the authority or discretion to alter the compensation and benefits for her family member, and must provide compensation and benefits that are identical for all members in the class.¹⁶

VIII. Other Considerations

Where an official's spouse is employed by the public agency she serves, and the official is covered under health insurance provided by the agency to her spouse, there is an additional restriction. In that case, the official is receiving a thing of value, for purposes of R.C. 102.03(D) and (E). While the official is not prohibited from receiving the health insurance coverage, she is prohibited from taking any action to approve the union contract if it includes health insurance benefits and she is covered under those benefits.¹⁷

Any official whose family member has applied for a job with her public agency should ask her supervisors, or legal counsel for the public agency, whether the public agency has a policy or rule regarding employment of family members. (A public agency cannot create a policy or rule that is less restrictive than the prohibitions described above. However, a governmental entity can have a policy or rule that is more restrictive than the Ethics Law.)

Finally, while the Ethics Law does not absolutely prohibit relatives from working for the same public agency, questions of fairness and impartiality may arise in such situations. Further, such hires may present the appearance of impropriety to the public, even where the public official fully and completely removes herself from participating in the hiring process, as described above. A public agency may be

able to minimize these concerns if the agency conducts all hiring activity in a fair, open, and impartial manner.

IX. Penalties

The Ethics Law and related statutes are criminal laws. If a person is convicted of violating an ethics law, that person may receive a jail sentence and/or have a fine levied against her.

R.C. 2921.42(A)(1) is a fourth-degree felony with a maximum penalty of eighteen months in prison and/or a \$5000 fine. R.C. 102.03(D) is a first-degree misdemeanor with a maximum penalty of six months in prison and/or a \$1000 fine.

X. Conclusion

Please contact the Ethics Commission if you have questions about this information sheet or the Ohio Ethics Laws. This information sheet is not an advisory opinion, and is not intended to provide advice on specific facts. Copies of the Commission's formal advisory opinions can be obtained from: Ohio Ethics Commission, William Green Building, 30 West Spring Street, L3, Columbus Ohio, 432315-2256; telephone (614) 466-7090, and on the Commission's Web site: www.ethics.ohio.gov.

Endnotes:

¹ The ethics agency with jurisdiction over ethics issues related to members and employees of the General Assembly is the Joint Legislative Ethics Committee. The ethics agency with jurisdiction over ethics issues related to judicial officers and employees is the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court.

² [Ohio Ethics Commission Advisory Opinion No. 80-001](#).

³ [Adv. Op. No. 80-001](#).

⁴ [Adv. Ops. No. 85-015](#) and [97-004](#).

⁵ [Adv. Op. No. 85-015](#).

⁶ [Adv. Ops. No. 92-012](#) and [98-003](#).

⁷ [Adv. Op. No. 92-012](#).

⁸ R.C. 102.01(B) and (C); A "public official or employee" includes any person who is elected or appointed to an office or is an employee of any public agency.

⁹ [Adv. Op. No. 97-004](#).

¹⁰ See [Adv. Ops. No. 82-003](#), [89-005](#), and [92-012](#).

¹¹ [Adv. Op. No. 92-012](#).

¹² [Adv. Ops. No. 90-004](#), [91-004](#), and [92-012](#).

¹³ [Adv. Op. No. 92-012](#).

¹⁴ [Adv. Ops. No. 89-005](#), [92-017](#), and [98-003](#).

¹⁵ [Adv. Op. No. 92-012](#).

¹⁶ [Adv. Op. No. 91-004](#).

¹⁷ [Adv. Op. No. 92-017](#).



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BULLETIN—

Reminder about Summer Jobs and Restrictions on Nepotism

TO: Cities, Villages, Townships, School Districts, and other public agencies

FROM: Paul M. Nick, Executive Director

DATE: May 2, 2012

During summer vacation, many high school and college students seek summer jobs. Many of these are seasonal full-time or part-time jobs (such as lifeguards and camp counselors) with cities, villages, school districts, and other public agencies that offer summer programs.

The Ohio Ethics Commission has issued this bulletin reminding public officials and employees about the restrictions in the Ethics Law against hiring their family members. If you have any questions about this bulletin, please contact the Commission or visit our Web site—www.ethics.ohio.gov.

What does the law prohibit?

Ohio's Ethics Law prohibits *all* public officials and employees from:

- Hiring their family members for public jobs;
- Using their public positions to get public jobs (or other contracts) for family members [for example, a public official can't ask someone else at the agency to hire the official's family member]; and
- Using their public positions to get promotions, selective raises, or other job-related benefits for their family members.

Who is a “public official”?

A public official is any person, paid or unpaid, and regardless of how much money earned:

- Who is **elected** or **appointed** to a full-time or part-time public position; or
- Who is **employed** by a public agency in a full-time or part-time public job.

Who is a “family member”?

A public official's family members include, but are not limited to, the official's:

1. Husband or wife;
2. Child or grandchild of any age, regardless of whether dependent;
3. Parent or grandparent;
4. Brother or sister; and
5. Step-child or step-parent.

Also included is any other person who is related to the official by blood or by marriage (e.g., uncles, aunts, cousins, nieces, nephews, and in-laws) and who lives in the same household with the official.

Can a public official hire a family member who doesn't live in the same household?

No. The official can't hire the family members in the numbered list (above) no matter where they live.

Can a public official hire a family member for a part-time or seasonal job?

[Continued on page 2]

No. A public official is prohibited from hiring a family member for any job—full time, part time, temporary, permanent, intermittent, or seasonal.

If a public official’s family member is an applicant for a job, can the official interview the other applicants?

No. By doing so, a public official could be eliminating other applicants, which would be using the public position to secure the job for a family member.

Can a public official’s family member work for the same agency as the official?

Yes, provided that:

- The official has not hired, recommended the hire, or otherwise been involved in any way in the hire of, the family member; and
- The family member is not the official’s minor child.

What if a job candidate is a public official’s minor child?

An official’s minor child cannot work for the same agency unless the official can show four things:

1. The agency’s hiring process will be fair and open and will not favor the children of the agency’s officials and employees;
2. The agency will provide a broad opportunity to qualified and interested applicants to submit applications;
3. All qualified and interested applicants who are not related to agency officials or employees have already been hired; and
4. Vacancies still exist.

The official must also show that:

- The public had full knowledge of the family relationship; and
- The official did not participate in the agency’s deliberation or decision involving the employment of family members.

Does this apply to all children under 18?

Yes, if they are un-emancipated. An un-emancipated minor child is receiving support from and subject to the control of parents. Most minor children are unemancipated.

What about a step-child?

The same restrictions apply to a public official if the official’s step-child is seeking a public job.

Why is the result different for minor children?

Because a parent has a legal right to control the earnings of an un-emancipated minor child, a public official would have a financial interest in the minor child’s job.

What if the parent doesn’t take the child’s earnings or otherwise use the right to control them?

Even if the parent has not used the right to control the child’s earnings, he or she could do so at any time. For that reason, the parent has a financial interest in the earnings.

Can a public agency have a policy or rule that allows officials to hire their family members?

No. The Ethics Law is part of the general criminal code of the state. Local charter provisions, ordinances, policies, rules, and other guidelines cannot conflict with general state law.

If a public agency has always hired the minor children of officials and employees in the past, can it continue that practice?

No. An agency cannot rely on past practice to justify not adhering to the Ethics Law.

What are the penalties for violations?

- Hiring a family member can be a felony offense.
- Having an interest in a family member's employment can be a misdemeanor offense.
- If a person is hired in violation of the Ethics Law, the employment contract is void and unenforceable, and the person can be removed from employment at any time.

How can I reach the Commission for help?

- Telephone: (614) 466-7090
Monday to Friday, 8:00 AM to 5:00 PM
[Ask for an advisory attorney]
- Website: www.ethics.ohio.gov
[Use the search term "nepotism"]

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