

OHIO ETHICS COMMISSION

Merom Brachman, *Chair*
Sarah M. Brown, *Vice Chair*



8 East Long Street, 10th Floor
Columbus, Ohio 43215
Telephone: (614) 466-7090
Fax: (614) 466-8368
Web site: www.ethics.ohio.gov

David E. Freel, *Executive Director*

August 11, 2005

Informal Opinion 2005-INF-0811

Ronald S. Kreuter, Service/Safety Director
City of Mansfield

Dear Mr. Kreuter:

On March 16, 2005, the Ohio Ethics Commission received your request for an advisory opinion. You asked whether the prohibitions imposed by the Ohio Ethics Law and related statutes upon the police chief and the fire chief of the City of Mansfield (City) preclude their sons from becoming employees of the City police and fire departments, respectively. With your letter, you included an opinion on the same topic rendered by the Law Director, David L. Remy, on November 22, 2004. The Law Director concluded that the participation of the chiefs in all operational facets of their respective departments unequivocally placed them in a position of exercising the power and influence of their positions to affect the hiring process regarding their sons.

On July 25, 2005, I called you to explain that the Commission was still working on its draft of an advisory opinion based on the information you had provided. You stated that you planned to go forward with appointments of the police and fire chiefs' sons. I explained that the Commission's draft opinion, based on the information you had provided in March, agreed with the Law Director's opinion that the police and fire chiefs could not hire their sons. The Commission concluded the Law Director had the most complete information about the operational practices of the Mansfield police and fire departments, and his conclusion that these officials held positions where they would inevitably exercise power and influence which would affect the decision-making process regarding the employment of their sons.

Subsequent to our conversation, you and other City officials asked the Commission to consider additional information that you believed was relevant to the question before issuing an opinion. The Commission agreed to consider the additional information. Last week, you and the police and fire chiefs provided significant additional information explaining the process you engaged to remove the chiefs from hiring decisions affecting their sons and the procedures that would be implemented in the operation of the City's police and fire departments should the chiefs' sons be hired.

Brief Answer

As explained below, R.C. 2921.42(A)(1) prohibits the police and fire chiefs from authorizing or using their official authority or influence to secure an employment contract or any employment benefits for their sons. R.C. 2921.42(A)(1) and R.C. 102.03(D) and (E) prohibit each chief from using his position to secure employment for his son, and from making decisions that affect the conditions of his son's individual employment relationship with the City, even if the Service/Safety Director is the actual hiring authority. However, if the chiefs have been removed from all decisions that would affect their sons, the Ethics Law does not prohibit the Service/Safety Director from appointing the sons of the chiefs, where they are recommended for employment following an objective merit selection process, to employment positions in the police and fire departments. The substantial additional information provided to the Commission in the last week demonstrates that the City has established procedures that remove the police and fire chiefs from decisions that would affect their sons' individual employment with the City.

Facts

You state that you are the City Service/Safety Director. You state that the sons of the police chief and the fire chief have taken the civil service tests in hopes of becoming employees of the City police and fire departments.

In your March letter, you explained that you, as Service/Safety Director, have the final say in hiring, termination and discipline, and negotiation of contracts that control compensation and benefits for members of the safety forces. You explained that the police and fire chiefs could request withdrawal from the hiring process.

In letters sent by you and the chiefs in the last week, you have considerably amplified this information, and explained the following about the current hiring process:

- The City Civil Service Commission contracted with a private company (IO Solutions from Chicago) to develop, conduct, and grade the police officer and firefighter examinations. The results are returned to the Civil Service Commission in a sealed envelope.
- Based on the results, and after adding bonus points for military service and education, the Civil Service Commission certified the candidates for background examinations (done by Ohio LEADS) and polygraph examinations (conducted by a private company hired by the Civil Service Commission).
- All candidates were interviewed by a three-person selection committee. Each committee member completed a form on each candidate voting to pass or fail the candidate.

- Historically, the selection committee for police candidates was composed of the Service/Safety Director, a member of the local NAACP and the police chief and the selection committee for fire candidates was composed of the Service/Safety Director, a member of the local NAACP and the fire chief.
- For this selection process, you banned the chiefs from participating in the hiring process, including serving on the selection committee. You placed the assistant police chief (who is appointed by the Mayor rather than the police chief) on the police selection committee and one of the assistant fire chief on the fire selection committee.
- In your role as the Service/Safety Director, you selected the successful candidates for appointment from the candidates forwarded from the committee. Following successful completion of required medical tests, the candidates were scheduled for training at the appropriate academy.

With respect to supervision of police officers and firefighters subsequent to hire, the newly submitted letters explain:

- The Mansfield Division of Police has 102 sworn and 45 non-sworn members. There are four levels of supervision between the chief and a new officer.
- The Mansfield Division of Fire has 105 sworn and 3 non-sworn members.
- Changes in compensation or benefits, assignment of duties, promotions, layoffs, and removal for police officers and firefighters are addressed by either collective bargaining agreements or statute.
- Line commanders, rather than the chiefs, evaluate new officers.
- Before new officers begin service, steps are being taken to remove the chiefs from all matters, including disciplinary actions, involving their sons. If matters arise, another officer, reporting to the Service/Safety Director, will make decisions and authorize required actions. The chiefs' sons will begin service with the departments after concluding their training. The fire chief's son will complete his training in late September and the police chief's son in late November or early December.

Public Official Hiring A Family Member

The Ethics Commission is statutorily empowered to issue advisory opinions interpreting the statutes under its jurisdiction. R.C. 102.08. The Commission has, under this authority, issued advisory opinions addressing the prohibition imposed by R.C. 2921.42(A)(1), which provides that no public official shall knowingly "[a]uthorize, or employ the authority or influence of his office to secure authorization of any public contract in which . . . a member of his family . . . has an interest."

Both a police chief and a fire chief are public officials for purposes of the restriction set forth in R.C. 2921.42(A)(1). See R.C. 2921.01(A); Ohio Ethics Commission Advisory Opinion No. 90-010. A public official's children, whether dependent or not, are members of the official's family for purposes of the restriction in R.C. 2921.42(A)(1). Adv. Op. No. 80-001.

A "public contract" is defined as the purchase or acquisition of property or services, including "the employment of any individual," by any political subdivision of the state. R.C. 2921.42(G)(1). This provision prohibits any public official from either authorizing, or using the authority or influence of his or her office to secure authorization of, employment or employment-related benefits for his or her family members. See Adv. Ops. No. 92-012 and 97-004. See also Walsh v. Bollas (1992), 82 Ohio App. 3d 588 and In re: Removal of Ron Steed (July 27, 1989), Lawrence App. No. 1909

As noted above, you asked the City Law Director whether the Ethics Law would prohibit you from hiring the chiefs' sons. In his opinion, the Law Director recognized that the applicable statute, R.C. 2921.42(A)(1), does not create a "no-relatives policy" that determines eligibility for public employment on the basis of family relationships. However, based on the hiring and organizational procedures in place when you asked the question, the Law Director explained:

[T]he day-to-day participation, formally or informally, of the chiefs in all operational facets of their respective departments unequivocally places them in the position of exercising the power and influence inherent in their position and the prestige of their office to affect the decision-making process regarding their sons and such is clearly prohibited by state law.

In your letter, you stated that although you understood what the Law Director had advised, you did not understand how R.C. 2921.42(A)(1) prohibits you from hiring the chiefs' sons because you are not related to them. Further, in your August 2, 2005 letter, you explained that, in the time since the Law Director's opinion was rendered, you have taken numerous steps to remove the chiefs from the hiring process.

It must be noted that the issue does not involve decisions that you make as the City Service/Safety Director. Rather, the issue is whether the prohibition imposed by R.C. 2921.42(A)(1) upon the police chief and the fire chief precludes them from performing their duties regarding the employment of their sons in the police and fire departments. As the Commission explained in Advisory Opinion No. 90-010:

R.C.2921.42(A)(1) will absolutely prevent employment of a public official's family member only in instances where the public official is the sole or ultimate hiring authority, and where there is no other person or entity who may exercise such hiring authority. (Citations omitted.) A family member of an official will not be prevented from being employed by the same political subdivision in instances where the appointment may be made by some other person or entity who may exercise such hiring authority, where it is possible for a superior to authorize the employment, or where the official is not the appointing authority for that particular position. The official is, however, required under all circumstances to abstain from participating in the employment process.

The substantial additional information provided to the Commission in the last week demonstrates that the City has established procedures that remove the police and fire chiefs from decisions that would affect their sons' individual employment with the City. The police and fire chiefs are also prohibited from using their public positions in any informal way to secure the employment of their sons. If the Service/Safety Director has the authority to make appointments of police officers and firefighters, the Ethics Law does not prohibit the Service/Safety Director from hiring the sons of the police and fire chief where the chiefs have not participated in any way in the hiring process.

Participating in Matters Following the Initial Hire

The prohibition of R.C. 2921.42(A)(1) extends beyond the initial hire of a family member and prohibits a public official from participating in any matter or decision that could affect the continuation, implementation, or terms and conditions of a family member's employment. Adv. No. Op. 97-004. R.C. 102.03(D) and (E) also apply to actions of a public official or employee when a family member may be employed by the same public agency.

R.C. 102.03(D) and (E) prohibit a public official or employee, which would include a police or fire chief, from soliciting or using his position to secure "anything of value" that could have a substantial an improper influence upon the official with respect to the performance of his duties. Public employment, and the compensation and benefits that accompany it, are within the definition of anything of value. Adv. Op. No. 92-012. R.C. 102.03(D) prohibits a public official or employee from using his authority or influence, formally or informally, to secure the employment of his child, or to otherwise act with respect to his child's public employment. See Adv. Ops. No. 92-012 and 97-004. R.C. 102.03(E) prohibits a public official from soliciting employment or related benefits for a family member.

These prohibitions also extend beyond the initial decision to hire. Matters in which the official would be prohibited from participating include, but are not limited to, any of the following: (1) changes in compensation or benefits that are determined by individual working conditions; (2) the assignment of duties; (3) performance evaluations; and (4) actions involving promotions, discipline, lay-offs, and termination. Adv. Op. No. 90-010 and 97-004. Furthermore, R.C. 102.03(D) prohibits a public official or employee from using his office, formally or informally, to influence the decisions or actions of other officials or employees in matters that would affect the interests of his child's individual employment relationship.

The Law Director's November 2004 opinion stated that, at that time, the fire chief's and police chief's day-to-day participation in all operational facets of their departments continuously involve them in decisions that affect the employees of each respective department which creates an irreconcilable conflict under the prohibitions imposed by R.C. 2921.42(A)(1) and R.C. 102.03(D) and (E). However, the substantial additional information provided to the Commission in the last week demonstrates that the City has established procedures that remove the police and fire chiefs from decisions that would affect their sons' individual employment with the City.

Ronald S. Kreuter
August 11, 2005
Page 6

The removal of each chief from performing duties affecting the employment of his son, and the Service/Safety Director's assignment of those matters to an individual reporting to the Service/Safety Director, removes the conflict of interest under R.C. 2921.42(A)(1) and 102.03(D) and (E).

Conclusion

As explained above, R.C. 2921.42(A)(1) prohibits the police and fire chiefs from authorizing or using their official authority or influence to secure an employment contract or any employment benefits for their sons. R.C. 2921.42(A)(1) and R.C. 102.03(D) and (E) prohibit each chief from using his position to secure employment for his son, and from making decisions that affect the conditions of his son's individual employment relationship with the City, even if the Service/Safety Director is the actual hiring authority. However, if the chiefs have been removed from all decisions that would affect their sons, the Ethics Law does not prohibit the Service/Safety Director from appointing the sons of the chiefs, where they are recommended for employment following an objective merit selection process, to employment positions in the police and fire departments. The substantial additional information provided to the Commission in the last week demonstrates that the City has established procedures that remove the police and fire chiefs from decisions that would affect their sons' individual employment with the City.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on August 11, 2005. The Commission commends you, and the police and fire chiefs, for seeking guidance from the Commission before acting in the matters you described.

The opinion is based on the facts presented. It is limited to questions arising under Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code and does not purport to interpret other laws or rules. If you have any questions or desire additional information, please feel free to contact this Office again.

Sincerely,



Jennifer A. Hardin
Chief Advisory Attorney

cc: David L. Remy, Law Director