

Advisory Opinion
[John Smith]
Case No. 00006.A, Employment of Relatives
April 20, 2000

On March 28, 2000 you wrote the Board of Ethics and asked for an opinion on how the City's Governmental Ethics Ordinance applies to a situation you described in your letter and orally to Board staff.

You are the City's [Position XC]. You believe you are distantly related to the owner of a controlling interest in a company that is a joint venturer in an entity currently under contract with [your] department. As [an XC], you would be expected to authorize continuing payments under the contract and to sign off on any extensions of the contract. You have asked whether the Ordinance prohibits you from exercising these responsibilities.

It is the Board's opinion, based on the facts you presented, that the Ordinance does not prohibit you from exercising any of the duties you described with respect to this contract. Our statement of the facts and our analysis under the Governmental Ethics Ordinance follow.

Facts: The situation you described is as follows: you are (and have been since [xxxxxxxxx], 1999) [in Position XC]. Before that, you served in the Department of [R] and then as Position XV], which position you held for 13 years until you became [Position XC]. In 1997, you served on a four member evaluation and selection committee that, you recall, voted 3-1 to award a three year engineering contract to [QRST Partnership] (you were one of the 3). The contract's original term expires in the summer of 2000. The contract provides for two additional one year extensions, if agreed by the parties. As [Position XC], you would be expected to approve and sign any such extension. Moreover, as [XC], you have authorized payment to [QRST] under the contract by signing vouchers. You told staff that, several weeks after you cast your vote in 1997, you learned through another City employee that you could be distantly related to [Mr. John Jones]. [Mr. Jones] owns a controlling interest in [Jones and Associates], which is one of two partners in [QRST]. You have since learned that it is likely that your great-grandmother and [Mr. Jones's] grandfather were brother and sister, though [Mr. Jones] has stated to you that he has no knowledge of this and knows of no one who can confirm it. Assuming this relationship to be true, [Mr. Jones] is, according to the table of consanguinity, your second cousin once removed. You also told staff that you have no ownership interest in, or any employment relationship with, [Jones and Associates].

Law and Analysis: The main issue presented by these facts arises under Section 2-156-130(b) of the Ordinance. That section provides:

No official or employee shall exercise contract management authority where any relative of the official or employee is employed by or has contracts with persons doing City work over which the City official or employee has or exercises contract management authority.

This section prohibits you, as a City employee, from exercising “contract management authority” over any person (including a company or partnership) if that person employs or contracts with any “relative” of yours. For purposes of analysis, the Board concludes, consistent with prior cases, that the activities you have performed and would continue to perform—namely having served as a voting member of the committee that awarded [QRST] the City contract at issue, and authorizing payment vouchers under this same contract—qualify as having and exercising contract management authority over [QRST].¹ See, e.g. Case Nos. 93038.A, 95059.I. Thus, the issue before the Board is whether, if you continue to exercise contract management authority over [QRST’s] City contract, you would be exercising contract management authority over a person doing City work that has contracts with your relative.

The term “relative” has a specific meaning in the Governmental Ethics Ordinance. It is defined in Section 2-156-010(w) as

a person who is related to an official or employee as spouse or as any of the following, whether by blood or by adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister, half-brother or half-sister.

The relationship of second cousin once removed, which, according to the best information available to you, is the very relationship you have with [Mr. Jones], is not included within this definition.

¹Section 2-156-010(g) of the Ordinance defines “contract management authority” as personal involvement in or direct supervisory responsibility for the formulation or execution of a City contract, including without limitation the preparation of specifications, evaluation of bids or proposals, negotiation of contract terms or supervision of performance.

Determination: On this basis, the Board determines that, if in fact [Mr. Jones] is your second cousin once removed, that relationship does not prohibit you, under the Ordinance, from exercising contract management authority with respect to the City's contract with [QRST].²

Our determination does not necessarily dispose of all the issues relevant to your situation, but is based solely on the application of the City Governmental Ethics Ordinance to the facts stated in this opinion. If the facts presented are incomplete or incorrect, please notify the Board immediately, as any change in the facts may alter our opinion. Other laws or rules may also apply to your situation. We note that any City department may adopt restrictions that are more stringent than those imposed by the Governmental Ethics Ordinance.

Reliance: This opinion may be relied upon by: 1) any person involved in the specific transaction or activity with respect to which this opinion is rendered; and 2) any person involved in any specific transaction or activity that is indistinguishable in all its material aspects from the transaction or activity with respect to which this opinion is rendered.

[Signed]

Darryl L. DePriest
Chair

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² From the facts presented, the Board concludes that you do not have an economic interest in the matter of [QRST's] contract or in the decisions to award the contract or continue to approve payments under it. Thus, Sections 2-156-030 and -080, respectively entitled "Improper Influence" and "Conflicts of Interest," do not prohibit you from performing your duties with respect to [QRST's] contract.