



Board of Ethics – City of Stamford
888 Washington Boulevard
P.O. Box 10152
Stamford CT 06904-2152

June 13, 2013

Mr. Daniel Colleluori, Supervisor
CITY OF STAMFORD
Solid Waste and Recycling

Re: Request for Advisory Opinion

Dear Mr. Colleluori:

Thank you for your submission of March 18, 2013 requesting an Advisory Opinion from the Board of Ethics (the "Board"), and for attending the Board's April 10, 2013 meeting to respond to inquiries concerning that request.

You have stated that your agency would like to hire Marc Orgera as a *laborer* to fill a Transfer Station position. Marc Orgera is the son of Ernie Orgera, the City's Director of Operations (the "Director"). You have requested our opinion that this hiring would not, given his relationship to the Director, violate the Stamford Municipal Code of Ethics (the "Code").

It is the Board's opinion that hiring Marc Orgera as described herein would not violate the Code. This opinion is subject to the qualifications and caveats discussed below.

BOARD INQUIRIES

This opinion relies upon information provided in your submission and your comments at the April 10 public meeting, as well as information received in a May 8, 2013 public meeting. Attendees at the May 8th meeting included Joseph Capalbo, the City's Director of Legal Affairs, and Emmet Hibson, the City's Director of Human Resources, whose comments were most helpful concerning the City's hiring policies. This opinion is strictly limited to the information stated herein, and any change in that information could dictate a different finding.

RELEVANT CODE PROVISIONS

In relevant part:

Code Section 19-4 prohibits *officers* from having personal or immediate family interests that conflict with the proper discharge of their duties or create a divided loyalty that might impair their judgment. It *deems* a conflict to exist whenever an officer will more likely than not benefit, disproportionately from other citizens of the City, directly or indirectly, from a decision over which they have *influence*; and

Code Section 19-5(A) prohibits *officers* from *participating* in decisions by their agencies if their immediate family has an interest or would be likely to gain or lose a material benefit not common to the general interest of other citizens of the City.

OPINION

As a mayoral appointee, the Director is an "officer," and is subject to the provisions of Code Sections 19-4 and 19-5(A) (see Section 19-3). Further, Marc Orgera is part of the Director's "immediate family" (also Section 19-3).

1. Prohibited Deliberation or Participation. Section 19-5(A) is implicated because, for Marc Orgera, being hired by the City would constitute the gaining of a material benefit not common to the general interest of other citizens (particularly those *not* hired in the same process). Accordingly, it would violate Section 19-5(A) for the Director to deliberate or participate in your agency's decision to hire Marc Orgera.

Your submission and your comments at the April 10 meeting stated that the Director did not participate in the process or deliberation that selected Marc Orgera for the subject position. Your information represents that the process followed the City's normal hiring system, which places hiring decisions one and two levels below the Director. You further represented that during that process the Director expressed no wish or preference for or against any particular candidate, and that the Director did not engage in any conduct to influence the hiring decision.

The comments of Messrs. Capalbo and Hibson, particularly their explanation of the City's selection and hiring practices, tended to support your information. Their comments satisfied the Board that, as a systemic matter, the Director would not directly participate in hiring decisions such as that in question here. Their comments also confirmed that although the City has considered enacting such a policy, no such "anti-nepotism" or similar policy has been adopted that would govern or prevent the hiring of an immediate family member of a City officer.

Accordingly, the Board finds no violation of Code Section 19-5(A) if Marc Orgera is hired as described above.

2. Conflict of Interest. Under Section 19-4, the Director would have a prohibited conflict of interest if he would more likely than not indirectly benefit, disproportionately from other citizens, from his son's employment by the City, if the employment is a decision over which the Director has *influence*. For these purposes, we recognize *formal* organizational influence (e.g., direct managerial authority), as well as *informal* influence.

As noted above, Messrs. Capalbo and Hibson spoke to the absence of organizational influence by the Director in the City's selection and hiring practices. Their comments in the discussion of Section 19-5(A) apply equally to Section 19-4, and are adopted here.

As for informal influence, we recognize that the mere status of "Director" implies that its holder may influence others, particularly subordinates, without "firing a shot." But we regard any affect of such status on the actions of those in its penumbra as too intangible to be covered by the intent of Section 19-4. We note it is precisely that intangible, inherent possibility (namely, that a subordinate would be influenced by the mere fact that the candidate is the "boss's son") that an anti-nepotism policy would address. In the absence of such a policy, the Board did not find that the Director exerted or attempted to exert any influence over the hiring process within the meaning of the Code.

Accordingly, the Board finds no violation of Code Section 19-4 if Marc Orgera is hired as described above.

CAVEATS

We give this opinion with serious reservations, as we see fertile ground for Code violations whenever an immediate family member is employed by an agency under a parent's direction.¹ Such circumstances compromise managerial authority, and render its most obvious features (decisions to discipline and terminate) susceptible to conflict and influence. This can lead to adjudicative proceedings that are costly to all involved.

At this point, those fears are merely speculative and, as such, not appropriate for action by this Board under the current Code. We note that an anti-nepotism rule could properly address such issues. Such rules limit or regulate the hiring of family members. When the Board inquired whether the City has any such policy. Messrs. Capalbo and Hibson replied it does not, and portrayed a near-impossible difficulty to crafting one. Be that as it may; it is not the purview of this Board to adopt such a prospective rule. That is within the discretion of the Board of Representatives, as an elected body, stating the policy preferences of its electorate.

THE BOARD OF ETHICS

¹ By way of example, we note a possible violation of Code Section 19-8 if any officer or employee attempts to influence you or any other officer or employee about matters involving Marc Orgera's employment. Also, it might violate Code Section 19-5(B) for any person (including you) to grant special consideration, treatment or consideration to Marc Orgera in his laborer position. These and other violations would not be entitled to any protection from this opinion, and could be the subject of separate complaints under the Code.