



Everyday Ethics for Local Officials

Hiring: When a Relative Wants a Job

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QUESTION

I am recently elected. We have a vacancy in our Parks and Recreation Department that my nephew would be a perfect match for. He has a degree in Recreation and Leisure Studies from our local Cal State University and has worked for the agency during his summer breaks. Moreover, I ran on a platform of improving our afterschool programs for at-risk youth and I know my nephew would be of great assistance to me in making good on my campaign promises to the community.

The staff is concerned about hiring my nephew because of charges of nepotism. I think that it would unfairly discriminate against my nephew to disqualify him from competing for the position simply because his uncle is on the governing body. What are your views?

ANSWER

As with many ethical dilemmas, this is a situation in which there are competing values. One set of values involves attracting competent, enthusiastic and loyal employees to help the agency serve the community – locating and hiring competent staff is a key responsibility for public agencies. Of course, most people also feel a special loyalty that also causes them to want to help family members.

The other set of values involves avoiding the appearance of preferential treatment, improper influence, bias and favoritism – all of which relate to the public's sense of the fairness of the agency's recruitment and selection process.

The Pluses and Minuses of Nepotism

According to the Wharton School of Business at the University of Pennsylvania, the positive aspects of hiring relatives in the private sector can include: lower recruiting costs, less employee turnover, higher levels of loyalty, trust and satisfaction, and finally, a heightened sense of commitment to or "ownership" of the job. The negative aspects can include employee morale issues associated with the perception (or reality) of favoritism, difficulties associated with discipline by immediate supervisors, and an increased potential for collusive behavior.

In the public sector, nepotism is generally disfavored. Part of this is history, which is quite interesting. Back in the early 19th century, it was customary for job seekers with the federal government to make a campaign contribution to someone running for office. If the person won, the job was considered a reward for political support. The practice of giving jobs in return for political support was known as the “spoils system,” from a speech by a senator in which he defended political patronage systems and declared “to the victor belong the spoils.”

This system diminished the public’s confidence in government, because positions were not being filled on the basis of who was the most qualified to perform the public’s work. The system bred corruption and inefficiency, which led to a number of scandals that further eroded public support for government. The public’s desire for a merit-based system was then increased in the 1880’s, when then-President Garfield was assassinated by a disappointed government-job seeker. Reforms (which included anti-nepotism provisions in addition to instituting a merit-based system) occurred at the federal level, as well as state and local levels.

The underlying principle of these laws is that public employment decisions should be based solely on merit – the education, experience and skills an individual can bring to the position in question. Such decisions are all about finding the very best-qualified individual to serve the public.

Hiring relatives is considered analogous to hiring individuals based on personal or political relationships, since the predominant factor appears to be the personal tie. Moreover, it can be inherently difficult (or perceived to be so) to evaluate objectively the competing qualifications of a stranger against those of a relative.

More challenges can ensue once a relative is hired. There can be a perception (or possibly a reality) that a family member of an elected official is not subject to the same standards, possibly out of concerns that the elected official will take a dim view of any criticism of his or her family member. This can create morale problems for other employees. These dynamics can diminish the overall effectiveness of the organization.

What to Do?

First, Consult the Agency’s Policies

The first thing you may want to do is to check to see if your agency has an antinepotism policy. The policy against nepotism is sufficiently strong in some agencies, for example, the City of Riverside, that it is expressed in its city charter. Other agencies have such policies expressed in their municipal codes, resolutions or memoranda of understanding with bargaining groups.

If your nephew's employment by the agency is barred by some form of agency policy, your inquiry is over. Your obligation as an elected official is to uphold the laws. As Cecil B. DeMille said "It is impossible for us to break the law. We can only break ourselves upon the law." The agency cannot hire your nephew unless you choose to resign your seat on the governing body.

(You may feel the policy is unfair and should be changed, but the worst thing you could do in terms of the public's perception of your ethics and credibility is attempt to modify the agency's standards in a way that would benefit your family members. Make that pitch, if you feel so inclined, when you do not have a personal stake in the outcome.)

If there is no anti-nepotism policy that governs the situation, you will still want to consult with your agency attorney about whether any of the various conflict of interest or self-dealing laws would create issues for you or the agency in the event your nephew (or other family member) became an employee.

Nepotism and the Law

State law does not specifically address the issue of nepotism in local agency hiring decisions. The California Department of Fair Employment and Housing Act does, however, prohibit discrimination in employment decisions based on marital status.¹ An anti-nepotism policy that forbids the hiring of spouses could arguably constitute discrimination based on marital status.

Recognizing this (and, implicitly, the benefits of anti-nepotism policies), the act allows employers to reasonably regulate, for reasons of "supervision, safety, security, or morale" spouses working in the same department, division or facility.² Such regulations must be consistent with rules adopted by the Fair Employment and Housing Commission.

For this reason, many local anti-nepotism policies refer to "supervision, safety, security, and morale" concerns as motivations. It can also be useful to include findings indicating that such policies are motivated by business necessity concerns relating to supervision, safety, security, morale and the public's trust in the agency's merit-based employment system. "Business necessity" is one of the factors courts look at in reviewing claims of discrimination under civil rights laws in general.

Under the Commission's regulations, local policies may prevent one spouse from directly supervising one another. Policies preventing spouses from working in the same department are permissible if the work involves potential conflicts of interest or other hazards that are greater for married couples than for other persons. Moreover, if co-employees marry, the employer is required to make reasonable efforts to assign job duties so as to minimize problems of supervision, safety, security, or morale.³

Note that the state anti-discrimination laws only refer to discrimination based on marital status – not family status in general (except for the housing antidiscrimination laws).

Then, Consult Ethical Principles

If there is no agency policy relating to nepotism or other legal bar, your inquiry is not over. Just because something is legal, does not mean it is ethical. Some soul-searching is in order. Here are some questions to ask yourself:

- Given the size of your agency and the supervisorial relationships, is it possible for the individual responsible for evaluating the competing candidates for the position in the Parks and Recreation Department to make a selection solely based on the merits of each candidate's qualifications, irrespective of the family relationship?
- Will the hiring supervisor feel your views of him or her will be affected by the decision to hire (or not) your nephew? (Perhaps a better way of asking this question is how would you feel if you were in the hiring supervisor's position? Would you fear your own continued employment or advancement could be affected by the decision to hire one of your elected official's relatives?)
- Will the hiring supervisor feel comfortable candidly evaluating your nephew's performance?
- Will the fact that your nephew has a special relationship with you affect how he performs his duties (will he, for example, be more inclined to spend time on duties that he knows are important to you)? This is where the fact you feel your nephew may be able to help you in making good on your campaign promises is a minus – his job as an agency employee is to implement the agency's policies as a whole – not the policy goals of one elected official.
- Will your nephew's colleagues feel that he got the position because of you and how will that affect his relationships with them and his overall career advancement potential in the field?
- Could you be objective in your analysis of the budget proposals for the Parks and Recreation Department, knowing that your nephew's compensation, advancement opportunities or even continued employment, might be affected by those decisions?
- How would you feel if the fact that the agency hired your nephew were reported in a critical fashion in the local newspaper? How would your nephew and other agency staff members feel about such coverage? Would it put everyone in a bad light?
- Most importantly, what will the community think about the agency's hiring practices and your personal ethics if it becomes known that the agency hired your nephew?

Are You Heeding Your Advisor's Advice?

Reading between the lines, it appears as if your agency's management is counseling against the hiring of your nephew, to avoid even the appearance of favoritism. It may well be that the manager has run through the above series of questions and has determined that the risks to the agency in terms of morale and adverse public reaction outweigh the benefits of having your nephew – with all of his talents and qualifications – work for your agency.

Moreover, management staff is likely to know that a person with your nephew's qualifications is likely to be able to find equally meaningful employment with another agency – without the taint of having the basis for his hiring under question. Because it is easier for staff to be objective in analyzing the questions suggested above, you would likely be wise to heed his or her counsel in this situation.

The Relationship Between Elected Officials and Staff

The elected official sits as one of the agency's governing board that sets policy for the agency and gives direction to the agency manager. This includes policies and programs contemplated in the agency's budget. The manager's job is then to implement the board's policies and priorities by giving direction to staff.

To begin the process of making good on campaign promises relating to after-school programs for at-risk youth, an elected official should speak to the agency's top administrative official about the agency's existing programs and the options the agency might explore. At some point, the administration may schedule the topic for board discussion, so the board as a group can evaluate the agency's efforts in this area and their colleague's proposals that the agency expand or redirect its efforts.

Generally speaking, it is improper for an individual elected official to give direction to staff, particularly staff subordinate to the agency manager. There is an ethical dimension to this issue, because staff is in an inherently difficult position.

Their jobs require that they follow the administrative official's direction based on the collective decisions made by the board, yet they may also feel pressured to do what an elected official directs them to do out of fears that there will be adverse consequences to them if they do not. Taking advantage of this power disparity under such circumstances is unethical. It can also be unlawful in those cities that have adopted a council-manager form of government.⁴

Even if the policy goals of an individual elected official are worthwhile (for example, after school programs for at-risk youth), the ends do not justify the means. In democratic government, the means are the ends. This is because the legitimacy of the ends depends on working through the proper processes to make sure a program reflects the collective input of the board and the community. Once that process has occurred and the policy has been approved by a majority or more of the board, it can be properly implemented by staff.

Ethics is Not Easy

Does this mean that the agency loses out on a great employee? Probably. This is a classic “personal cost” ethical dilemma – an example of when doing the right thing comes at a personal cost to you and your nephew.

Moreover, there is a short-term versus long-term aspect to this dilemma. While the agency and the community may forego the benefit of your nephew’s service in the short-term, in the long-term the community will know that you and the agency are both so committed to the principle of merit-based hiring that the agency will go to lengths to avoid even the appearance of favoritism. This will enhance the public’s trust and confidence in all decisions the agency makes – and you as a leader.

Is this unfair to you and your nephew? Probably. However, this is what the concept of integrity is all about – doing the right thing even when there is a personal cost. Moreover, this situation gives you the opportunity to talk candidly with your nephew about the importance of ethics and avoiding even the appearance of impropriety in public service. As he progresses in his career and becomes the hiring supervisor who is concerned about the potential effects of nepotism in his unit, he will come respect your wisdom, values and integrity all the more. He will also appreciate that his professional accomplishments are his own and no one can question that he achieved his positions as the result of family influence.

Aspirational Goals

Relevant ethics code provisions relevant to this topic include:

- **Trustworthiness**
I do not accept gifts or other special considerations because of my public position.
- **Fairness**
I support merit-based processes for the award of public employment and public contracts.
- **Responsibility**
I promote the efficient use of agency resources.

Other sample ethics code provisions are available under the “ethics codes” tab of the Institute’s website at www.ca-ilg.org/trust.

Finally, a number of local officials noted in response to this question that the reality is that public service involves sacrifices. There are some things that individuals cannot do by virtue of their status as public officials – some opportunities that they (and their families) cannot take advantage of.

One official even knows of a senior level public official who went so far as to retire from city service so his son could be considered for an agency position. In short, it is a matter of choices. In this instance, the senior level official determined that his son's opportunities were more important than his own. The son could also have chosen to apply for employment in agencies other than the one in which his father served.

This piece originally ran in *Western City Magazine* and is a service of the Institute for Local Government (ILG) Ethics Project, which offers resources on public service ethics for local officials. For more information, visit www.ca-ilg.org/trust.

Endnotes:

¹ See generally Cal. Gov't Code § 12940.

² See Cal. Gov't Code § 12940(3)(A).

³ See generally 2 Cal. Code Regs. § 7292.5.

⁴ See *Levy v. City of Santa Monica*, 114 Cal. App. 4th 1252, 8 Cal. Rptr. 3d 507 (2d Dist. 2004).