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OPINION NO. 2024-01

CHARTERS; ELECTED OFFICIALS;
EMPLOYMENT; LOCAL GOVERNMENT;
NEPOTISM; PERSONNEL; PUBLIC
OFFICER; STATUTES: NRS 281.210
prohibits public officers from directly
employing, or acting as the employing
authority over, any close relative
subsequently hired. Where a public officer
is prohibited by statute or city charter from
interfering with personnel decisions, he or
she does not employ or possess employing
authority over any public employees in
violation of NRS 281.210.

Nicholas G. Vaskov, City Attorney
City Attorney's Office
City of Henderson
240 S. Water Street, MSC 144
Henderson, NV 89015

Dear City Attorney Vaskov,

Pursuant to NRS 228.150, you have requested an opinion from this office regarding Nevada's anti-nepotism statute, NRS 281.210, in relation to certain provisions of the Henderson City Charter. Specifically, you have asked whether the hiring of a Henderson City Councilman's son for a position with the Henderson Parks and Recreation Department would violate NRS 281.210.

QUESTION

Whether the City of Henderson may hire a relative within the third degree of consanguinity of an elected member of the Henderson City Council ("City Council") without violating NRS 281.210 where, under the Henderson City Charter, councilmembers are prohibited from hiring or interfering in the hiring of city employees.

SHORT ANSWER

NRS 281.210 does not prohibit the hiring of a Henderson City Councilman's son for a position with the Henderson Parks and Recreation Department. The Henderson City Charter grants hiring authority with respect to personnel decisions to the Henderson City Manager and prohibits the City Council from interfering with the personnel process.¹ Accordingly, city councilmembers – though they are city officers under NRS 281.210 – do not employ city employees, and do not act as employing authorities as necessary to trigger a violation of Nevada's anti-nepotism statute.

ANALYSIS

I. Members of the Henderson City Council Are “Officers” Under NRS 281.210, but They Do Not “Employ” Henderson City Employees.

Although all members of the Henderson City Council are “officers” in the context of NRS 281.210, neither the City Council as a whole nor any individual city councilmember directly employs city employees. Thus, the provisions of Nevada's anti-nepotism statute prohibiting public “officers” from employing relatives within the third degree of consanguinity do not bar the City of Henderson from employing a City Councilmember's relative.

NRS 281 defines “public officer” as a “person elected or appointed to a position which: (a) Is established by the Constitution or a statute of this State, or by a charter or ordinance of a political subdivision of this State; and (b) Involves the continuous exercise, as part of the regular and permanent administration of the government, of a public power, trust or duty.” NRS 281.005(1). The Henderson City Council is comprised of four councilmembers and the Mayor. See Henderson City Charter art. II, § 2.010(1). The definition of “public officer” under NRS 281.005(1) applies to both because both positions are 1) established by the Henderson City Charter; and 2) involve continuous exercise of legislative power. Therefore, a Henderson City Councilmember is an “officer” for purposes of NRS 281.210.

NRS 281.210(1) makes it unlawful for a public “officer” to employ a relative within the third degree of consanguinity.

¹ Except with respect to appointment of the three Executive Officers (City Manager, City Attorney, and City Clerk). See Henderson City Charter art. I, § 1.090.

[I]t is unlawful for any person acting as a . . . state, township, municipal or county officer . . . to employ in any capacity on behalf of the . . . municipality . . . any relative of such a person or of any member of such a board, agency or commission who is within the third degree of consanguinity or affinity.

Here, neither the City Council as a whole nor any individual city councilmember would be directly employing a councilmember's relative. Under the Henderson City Charter, the City Manager would employ the relative without interference or involvement of the City Council.

No Council Member or the Mayor may direct or request the appointment of any person to, or his or her removal from, office by the City Manager or by any of his or her subordinates, or, except as otherwise provided in section 1.090, in any manner take part in the appointment or removal of Executive Officers and employees.

Henderson City Charter art. III, § 3.140(1). This prohibition on any involvement by city councilmembers in hiring or firing city employees renders them unable to "employ" Henderson city employees pursuant to NRS 281.210.

II. Members of the Henderson City Council Are Not "Employing Authorities" Under NRS 281.210.

This office has issued multiple Attorney General Opinions (AGOs) interpreting hiring and employing authority under NRS 281.210, though they address dissimilar scenarios. Individualized analysis on a case-by-case basis is thus warranted.² In general, however, these AGOs have found that public officers and boards can shield themselves from violating NRS 281.210 by hiring or appointing an intermediary to make hiring decisions, unless they effectively are the "employing authorities." Public officers and boards are "employing authorities" only when they retain control over hiring authority.

Here, we focus our analysis on whether the City Council (and by extension, a city councilmember) has retained control over hiring authority and is thus an employing authority. NRS 281.210(1) provides in relevant part:

² To date, Nevada courts have yet to interpret the language of NRS 281.210.

[I]t is unlawful for any person acting as . . . an employing authority of . . . any town, city or county, or for any state or local board, agency or commission, elected or appointed, to employ in any capacity on behalf of the . . . municipality . . . any relative of such a person or of any member of such a board, agency or commission who is within the third degree of consanguinity or affinity.

Accordingly, if a city councilmember is acting as an “employing authority” of the City of Henderson to employ a councilmember’s son with the City of Henderson Parks and Recreation Department, this would violate NRS 281.210.

This office retains its opinion that “[t]he evil contemplated by the Legislature [in enacting NRS 281.210] was the packing of state employment with relatives of those having the appointing power, thus denying an equal opportunity to those not in the same category. [O]ne is less disposed to fire a relative regardless of ability, than to dispense with the services of one not so related.”³ On that basis, we have issued two opinions involving situations where the incumbent public employee was removed by at least one degree of separation from the hiring authority directing the hiring process of public employees or appointees.

In 1979, we opined:

[A] board cannot insulate itself from the Anti-Nepotism Law by hiring an employee who would then hire all employees for the district. This is because the ultimate hiring authority would still lie with the board, which would have the right at any time to intervene in or revoke the hiring employee's powers.⁴

³ Op. Nev. Att’y Gen. 656 (April 9, 1970).

⁴ Op. Nev. Att’y Gen. 79-B (April 23, 1979) (note that this Supplemental Opinion is not listed in the Syllabi of Attorney General's Opinions in the 1979 volume of the Official Opinions of the Attorney General. However, the opinion is published at page 164 of that volume).

We reaffirmed this reasoning in 2000, when we opined that the Churchill County Manager's daughter could not be lawfully hired by the county's Planning Director for a county position.⁵ We reasoned that, for the purposes of NRS 281.210, the County Manager holds employing authority over all county employees, even when the hiring is conducted by another appointee. Because NRS 244.135(2) grants the County Manager power to appoint a Planning Director, the County Manager exercises continuing control over the Planning Director.

Considering these prior opinions, it has been the longstanding position of this office that a public official retains employing authority irrespective of his or her degree of separation from the hiring authority if said official has power to intervene in, revoke, or in some other way control the hiring authority's powers. Nevertheless, this degree of control necessarily requires both the public official and the hiring authority to exist within the same line of supervision.

As noted above, the hiring authority here is the City Manager, along with the subordinate director of the Parks and Recreation Department. A city councilmember and City Manager, as officers of the legislative and executive departments of the city,⁶ do not exist within the same line of supervision necessary to trigger a violation of NRS 281.210.

Most importantly, although the Henderson City Charter grants some degree of control by the City Council over the City Manager,⁷ the City Manager's hiring authority remains exclusive; in fact, the City Council is expressly prohibited from interfering with the City Manager's hiring and termination decisions:

No Council Member or the Mayor may direct or request the appointment of any person to, or his or her removal from, office by the City Manager or by any of his or her subordinates, or, except as otherwise provided in section 1.090, in any manner

⁵ Op. Nev. Att'y Gen. 26 (November 1, 2000).

⁶ Henderson City Charter art. II, § 2.010, art. III, § 3.020.

⁷ See Henderson City Charter art. III, § 3.030 (City Council has the power to remove the City Manager for cause); Henderson City Charter art. III, § 3.020 (City Council has the power to designate the City Manager's administrative and executive duties and set the City Manager's salary).

take part in the appointment or removal of
Executive Officers and employees.⁸

Moreover, the City Council is prohibited from interfering with the City
Manager's personnel matters in general:

Except for the purpose of inquiry, the Council and
its members shall deal with employees solely
through the City Manager, City Attorney or City
Clerk, as applicable, or their designees. Neither the
Council nor any member thereof may give orders to
any subordinate of the City Manager, City Attorney
or City Clerk, either publicly or privately.⁹

Therefore, the City Council holds no sway over the City Manager as the
chief executive officer of the city with respect to hiring city personnel.
Accordingly, the City Manager, not the City Council or its members, is the
employing authority for purposes of NRS 281.210. Where the incumbent public
official is not the employing authority, there is no violation of Nevada's anti-
nepotism statute.

CONCLUSION

The hiring of the Henderson City Councilman's son for a position with
the City's Parks and Recreation Department would not violate NRS 281.210.

AARON D. FORD
Attorney General

By: 
ALINA KRAUFF
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⁸ Henderson City Charter art. III, § 3.140(1).

⁹ Henderson City Charter art. III, § 3.140(2).