



KENNETH L. GARTNER
CHAIR

JARED A. KASSCHAU
COUNTY ATTORNEY

MICHAEL PERNICK
MEMBER

STEVEN G. LEVENTHAL
COUNSEL

**COUNTY OF NASSAU
BOARD OF ETHICS**

One West Street
Mineola, New York 11501-4820
516-571-3056

ADVISORY OPINION 111-18

The [redacted] Commissioner [redacted] (the "Commissioner") requests an advisory opinion as to whether a prohibited conflict of interest would arise if her [relative] [redacted] were to be employed by the Nassau County [redacted] to perform services in connection with the [redacted]

GOVERNING AUTHORITY

Nassau County Charter section 2218 (the "Code of Ethics") subdivision 7 (Hiring and supervision of relatives) provides, in pertinent part, that:

No officer or employee of the County shall hire or induce others to hire a relative of such officer or employee nor shall any officer or employee of the County directly supervise or evaluate the work of any relative employed by the County except: a) as required by the Civil Service Law or rules promulgated thereunder; b) pursuant to a supervisory arrangement that began prior to the effective date of this subdivision; or c) with the written approval of the Board of Ethics....

The "Code of Ethics" subdivision 1 (Definitions) provides, in pertinent part, that:

"Relative" shall mean mother, father, son, daughter, sister, brother, stepmother, stepfather, stepson, stepdaughter, aunt, uncle, cousins in the first and second degree of consanguinity, domestic partner, mother-in-law, father-in-law, sister-in-law, brother-in-law and grandparents.

DISCUSSION

In her inquiry to the Board of Ethics, the Commissioner stated that

[relative]

My [redacted]... has applied for a position with the Nassau County [redacted] through the Supplemental Staffing Contract. This [redacted] position involves work with their [redacted] is highly technical in nature, and has been vacant for some time due to the lack of identifying a qualified candidate. [My [redacted] [relative] has recently retired from the [redacted] as an Assistant Commissioner and has over 30 years of experience in [redacted]

I am not currently involved in any matters related to the [REDACTED]
[REDACTED] If [My [REDACTED] ... is selected for this position, and if by chance a matter does
come to my attention that is related to the [REDACTED] I will
recuse myself on any such matters.

In considering this inquiry, the Board of Ethics employed a three step analysis to determine whether, under the circumstance presented, a prohibited conflict of interest would arise if the brother of the Commissioner [REDACTED] were to be employed by the Nassau County [REDACTED] to perform services in connection with the [REDACTED]. The Board considered: (i) whether the proposed employment, under the circumstances presented, would violate Article 18 of the New York General Municipal Law (Conflicts of Interest of Municipal Officers and Employees), (ii) whether the proposed employment, under the circumstances presented, would violate the Nassau County Code of Ethics, and (iii) whether the proposed employment, under the circumstances presented, would create a prohibited appearance of impropriety under common law principles.

1. N.Y. Gen. Mun. Law Article 18

Article 18 of the New York General Municipal Law establishes minimum standards of conduct for the officers and employees of all municipalities within the State of New York, other than New York City.¹ All officers and employees must comply, whether paid or unpaid, including members of boards and commissions. GML Article 18 does not prohibit nepotism. To the extent the employment of a relative is addressed by GML Article 18, it is to exclude the employment contract of a spouse from those in which an officer or employee is deemed to have a prohibited interest.² Accordingly, under the circumstances presented, the proposed employment of the Commissioner's [REDACTED] by [REDACTED] would not violate Article 18 of the New York General Municipal Law [relative]

2. Nassau County Code of Ethics

The Nassau County Code of Ethics prohibit a County officer or employee from participating directly or indirectly in the decision to employ a relative, as that term is defined by the Code of Ethics, or from directly supervising or evaluating a relative employed by the County, except as required by the Civil Service Law or with the approval of the Board of Ethics.³

Here, the Commissioner has no involvement in matters involving the [REDACTED] and states that she will recuse herself in any such matter that may arise. Further, the Commissioner must refrain from influencing [REDACTED] in its decision with respect to her [REDACTED] application for employment.
[relative's]

Accordingly, based on the facts presented, and subject to the conditions set forth herein, the proposed employment of the Commissioner's [REDACTED] by [REDACTED] would not violate the Nassau County Code of Ethics. [relative]

¹ N.Y. Gen. Mun. Law §800(4).

² See N.Y. Gen. Mun. Law §800(3), 801.

³ The Code of Ethics also "grandfathers" supervisory arrangements that preexisted the effective date of the Code of Ethics, January 1, 1996.

3. *Common Law Principles*

Ethics regulations are not only designed to promote high standards of official conduct, they are also designed to foster public confidence in government. An appearance of impropriety undermines public confidence. Therefore, courts have found that government officials have an implied duty to avoid conduct that seriously and substantially violates the spirit and intent of ethics regulations, even where no specific statute is violated.⁴

Where a contemplated action by an official might create an appearance of impropriety, the official should refrain from acting. Officials should be vigilant in avoiding real and apparent conflicts of interest. They should consider not only whether they believe that they can fairly judge a particular application or official matter, but also whether it may appear that they did not do so. Even a good faith and public spirited action by a conflicted public official could tend to undermine public confidence in government by confirming to a skeptical public that government serves to advance the private interests of public officials rather than to advance the public interest.

In considering whether a prohibited appearance of impropriety has arisen, the question is whether an officer or employee has engaged in or influenced decisive official action despite having a disqualifying conflict of interest that is clear and obvious, such as where the action is contrary to public policy, or raises the specter of self-interest or partiality. A prohibited appearance of impropriety should not be found where a conflict is speculative or immaterial.

[relative]

Here, the Commissioner's [redacted] seeks employment in a department other than the one in which the Commissioner is employed. The Commissioner has no involvement in matters involving the [redacted] will recuse herself in any such matter that may arise, and is prohibited from influencing [redacted] in its decision with respect to her [relative] [redacted] application for employment. Under these circumstances, the proposed employment of the Commissioner's brother could not reasonably be expected to undermine public confidence in County government.

Accordingly, based on the facts presented, and subject to the conditions set forth herein, the proposed employment of the Commissioner's [redacted] by [redacted] would not create a prohibited appearance of impropriety under common law principles.

CONCLUSION

Based on the facts presented, and subject to the conditions set forth herein, a prohibited conflict of interest would not arise if the [redacted] of the Commissioner [redacted] were to be employed by the Nassau County [redacted] to perform services in connection with the [redacted]

⁴ See, e.g., Matter of Zagoreos v. Conklin, 109 A.D.2d 281 (2d Dept. 1985); Matter of Tuxedo Conservation & Taxpayer Assn. v. Town. Board of Town of Tuxedo, 69 A.D.2d 320 (2d Dept. 1979).

The foregoing constitutes the opinion of the Board of Ethics.

Dated: Mineola, New York
June 29, 2018



Kenneth L. Gartner, Chair