

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Friday, September 22, 2017 11:38 AM
To: Sanchez, Rodzandra (COE)
Subject: Luis Cuellar, Animal Services Department (nepotism, exploitation) INQ 17-233,

INQ 17-233 Cuellar

From: Turay, Radia (COE)
Sent: Wednesday, September 20, 2017 4:49 PM
To: Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>
Cc: Perez, Martha D. (COE) <Martha.Perez2@miamidade.gov>; Sanchez, Rodzandra (COE) <Rodzandra.Sanchez@miamidade.gov>
Subject: INQ 17-233, Luis Cuellar, Animal Services Department (nepotism, exploitation)

From: Turay, Radia (COE)
Sent: Wednesday, September 20, 2017 4:47 PM
To: Cuellar, Luis (ASD) <Luis.Cuellar@miamidade.gov>
Cc: Mejia, Lorna (ASD) <Lorna.Mejia@miamidade.gov>; Vazquez Jr, Emilio (ASD) <Emilio.VazquezJr@miamidade.gov>; Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>
Subject: RE: Question on Relatives Working for Same Department

Dear Mr. Cuellar,

You have inquired regarding whether a conflict of interest would exist if Miami-Dade County Animal Services Department, Shelter Services and Live Release Programs Division (SSLR) was to hire Mr. Alexandro Morales.

Background

- The SSLR Division has three vacancies in its Customer Service Unit.
- Mr. Morales applied, was interviewed, and received the third highest score out of ten candidates.
- In the event that he is hired, he will fill the last remaining vacancy in the Unit.
- Mr. Morales is the first cousin of Mr. Michael Leiva, the Shelter Program Manager in the SSLR Division.
- Based on the chart you provided regarding the SSLR Division, it appears that the Customer Service Unit is not under the command of Mr. Leiva. You, Mr. Cuellar, the Division's Shelter Program Coordinator are in charge of the Customer Service Unit.
- Mr. Leiva has no supervisory role or control over you or the Customer Service Unit.
- You report directly to Ms. Lorna Mejia- Lopez, Chief of Shelter Services and Live Release Programs.
- Mr. Leiva had no input in the interview and evaluation process leading to Mr. Morales potential hiring.
- Should Mr. Morales be hired, Mr. Leiva will have no input into the performance evaluation or the advancement of his cousin, Mr. Morales.

Analysis

The Miami-Dade Conflict of Interest and Code of Ethics Ordinance does not include a nepotism section. This issue falls under the County's Nepotism policy which is based on Section 112.3135, Fla. Stat.

Fla. Stat. 112.3135(2)(a) states that “a public official may not appoint, employ, promote, or advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the agency in which the official is serving or over which the official exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual or if such appointment, employment, promotion, or advancement is made by a collegial body of which a relative of the individual is a member.”

The definition of “relative” under Section 112.3134(1)(d) includes “first cousin”.

Further, the County’s Nepotism policy states that “Department directors are strongly encourages to refrain from placing relatives within another relative’s chain of command or placing or maintaining relatives in close proximity in a departmental subunit.”

The Miami-Dade Commission on Ethics and Public Trust (COE) does not have jurisdiction to authoritatively interpret or to enforce the state law, which falls under the purview of the State of Florida Commission on Ethics. The County policy which is based on the state law, is an administrative policy, and is not enforced by the COE. Therefore, we suggest that the circumstances you have described be brought to the attention of your Department Director, in consultation with the County Attorney’s Office.

Please be aware however, that even though the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance does not include a nepotism section, Section 2-11.1(g) of the Ethics Code, prohibits exploitation of official position.

Section 2-11.1(g), *Exploitation of official position prohibited*, states “No person...shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others....”

In prior ethics opinions this has been interpreted to mean that a County employee must avoid any action to hire, promote, or advocate for the advancement of an immediate family member. See INQ 06-67. Based on the facts that you have provided, specifically, that Mr. Leiva had no input in the interview and evaluation process leading to Mr. Morales potential hiring, and should Mr. Morales be hired, Mr. Leiva will have no input into the performance evaluation or the advancement of his cousin, Mr. Morales, it does not appear that a conflict of interest would exist under Section (g) of the Ethics Code.

This opinion is based on the facts presented. If any of these facts change, please contact us.

Sincerely,

RADIA TURAY

Staff Attorney

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From: Cuellar, Luis (ASD)
Sent: Saturday, September 02, 2017 4:58 PM
To: Ethics (COE) <ethics@miamidade.gov>
Cc: Mejia, Lorna (ASD) <Lorna.Mejia@miamidade.gov>; Vazquez Jr, Emilio (ASD) <Emilio.VazquezJr@miamidade.gov>
Subject: Question on Relatives Working for Same Department

Good afternoon:

We are seeking an opinion from the Ethics Commission on a matter regarding hiring a candidate for a customer clerk position.

Under the Shelter Services and Live Release Programs Division, we would like to hire a person that is related (first cousin) to my colleague Michael Leiva. This person would not report or be under Mr. Leiva's chain of command, but mine (please see attached TO). He would be hired under the Customer Service unit, which is directly under my purview and led by Emilio Vazquez, Customer Service Supervisor. Thus Mr. Leiva would never be a rater/reviewer for performance evaluations for this individual. Mr. Vazquez would be the rater, and I would be the reviewer. Ms. Lorna Mejia-Lopez, Chief of the Division would have a final say if necessary. Nonetheless, we want to ensure that this potential hire does not reflect a conflict of interest on the familial relationship with another manager, though, as stated above, Mr. Leiva would not be directly or indirectly involved in this person's performance review and/or daily operations.

As for the background information on this candidate, his name is Alexandro Morales, and he had the third highest score out of ten candidates that interviewed for this position (we have three vacancies, so he would fill the last remaining vacancy). Thank you for your consideration and assistance on this matter. Please let me know if you have any questions and/or concerns.

Best,

Luis Cuellar
Shelter Program Coordinator
Shelter Services and Live Release Programs Division
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