

CITY OF KINGSTON
Office of Corporation Counsel

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Steven T. Noble, Mayor

Kevin R. Bryant, Corporation Counsel
Daniel Gartenstein, Asst. Corporation Counsel

February 12, 2020

Office of the Attorney General
The Capital
Albany, New York 12224-0341

Attention: Correspondence and Public Information Unit

Dear Sir/Madam:

I am the Corporation Counsel for the City of Kingston and am writing this letter to request your opinion as to whether there is a conflict of interest with respect to a proposed departmental integration plan initiated by the Mayor, whose wife could potentially receive a promotion and salary increase.

BACKGROUND

The Mayor and his wife were hired by the City of Kingston Recreation Department as part-time camp counselors in 1999. She became full-time in 2007 and he in 2008. In November 2015, he was elected Mayor of the City of Kingston. On January 16, 2020, the Superintendent of Parks and Recreation tendered his resignation effective April 3, 2020. The departure of this employee with 23 years of service provided an opportunity to stream line and consolidate services offered by the City.

The Mayor's proposal now seeks to integrate the leadership teams of the Departments of Public Works and Parks and Recreation. Under this proposal, the Department of Public Works Superintendent will oversee both the Department of Public Works and the Parks and Recreation Department. A new Deputy Superintendent of Environmental Services will be established. The individual filling this position will work alongside the existing Deputy Superintendent and oversee several divisions, including: parks maintenance, recreation programming, environmental education and sustainability programs and the sanitation division. A Recreation Director will be appointed to supervise and lead new and existing recreation programs and services.

In a press release dated February 3, 2020, the Mayor explained that "[b]oth of these departments play unique and distinct roles in the day to day lives of our community members. However, there are a variety of core service areas offered by each department that intersect, and many large scale projects in the pipeline that will benefit from improved communication and collective planning."

The Mayor's wife currently works under the Superintendent of Parks and Recreation is the senior most employee working in the Department. Her current title is "Environmental Education and Sustainability Coordinator". She manages the City's environmental projects, initiatives and programming, including energy, land use, climate adaptation, transportation recycling and environmental education.

In the press release announcing the restructuring, it is mentioned that the Mayor's proposal would provisionally select his wife for the Deputy Superintendent of Environmental Services. This position would potentially increase her salary by

\$22,882.00 making the position on par with the current Deputy of Superintendent of Public Works and will require the standards for eligibility as set by the New York State Civil Service Department.

The planned integration of Departments and the creation of the contemplated position will require approval by the Common Council with regard to both the integration plan and funding. If the position is approved by the Council, the Civil Service Commission will create the job description and minimal qualifications. Once the description is adopted by the Common Council and funding is approved, an open and competitive exam will be scheduled. The individuals with the top three scores will be eligible for appointment.

It is our expectation that the Mayor would then recuse himself from any involvement in the provisional appointment and permanent hiring of the successful candidate. Under our charter, the appointing authority that would otherwise be vested in the Mayor would fall upon the Alderman at Large.

As the individual who currently serves as Alderman at Large has publicly disclosed that she is involved in a romantic relationship with our Superintendent of the Department of Public Works, whose employment and salary could be affected by the restructuring, our office will likely also recommend that the Alderman at Large recuse herself from participating in the hiring of the Provisional or Permanent Deputy Superintendent. If the Alderman at Large recuses herself, our charter calls for the Council to appoint someone from their ranks to temporarily assume the duties of the Alderman at Large. This individual would then undertake responsibilities attendant to the hiring for the newly created position.

We are aware that your office has opined on several occasions regarding the issue of nepotism and as a general proposition, it is recommended that members of legislative bodies should not take part in any actions concerning the salary and terms and conditions of employment of his or her spouse or family member in the same governmental unit (Op. Atty. Gen. 92-18). Also, while there is no general prohibition on a husband and wife serving the same local government, your office opined that "special considerations apply in light of the marital relationships." (Op. Atty. Gen. 94-11).

We realize municipal officials must avoid circumstances which compromise their ability to make decisions solely in the public interest. (Op. Atty. Gen. 97-5). Pursuant to Article 18 of the General Municipal Law, the City of Kingston has adopted a local code of ethic. The City's code, "set[s] forth the standards of conduct reasonably expected of their officers and employees" (General Municipal Law Section 806(1) (a)). It provides, in relevant part that "[a] City officer or employee shall not use his or her official position or take or fail to take any action, in a manner he or she believes, or has reason to believe, may result in a personal financial benefit for.... a member of his or her family." (Section 49-3A(5))

We are also aware of your office's position that a member of the city council must recuse herself from participating in matters concerning salary and terms and conditions of employment of her son who serves as the head of the department of public works. (Op. Atty. Gen. 91-18); the opinion that a county legislator should recuse himself from participating in any matters affecting the salary and terms and conditions of employment of his wife with the county. (Op. Atty. Gen. 86-45) and the opinion that a member of the City Council must recuse herself from participating in any matter concerning the salary and terms and conditions of employment of her spouse who serves as a city firefighter. (Op. Atty. Gen. 92-61). We also recognize that as an official recusing themselves from an issue, it is imperative that they not participate in any discussion, deliberation and/or potential vote that may take place regarding the hiring and or appointment of a family member. (A Family Tradition: Appointment of Spouses and Family Members, John Mancini, Bar Beat, _____).

While these opinions provide valuable guidance regarding how to proceed, none of these opinions are directly on point. Specifically, our present scenario concerns our chief executive and his spouse, an employee of the City who was employed long before her husband was elected Mayor.

It is our position that the restructuring plan proposed by the Mayor would not create a conflict of interest as the proposal will require approval by the legislative branch and the Mayor will have no part in the deliberative process or final vote on the proposal or the hiring if the position is approved. Please also note that under both our current departmental structure,

and under the proposed restructured Department the Mayor's wife will be directly supervised by a Department Head rather than by the Mayor.

While we believe that appropriate and necessary provisions have been made to avoid a conflict of interest, we believe that special attention and scrutiny of this matter is warranted in order to maintain public confidence in government.

As such we are requesting an advisory opinion as to whether the process or the proposed plan itself raises any conflict of interest concerns and whether the Department structure that has been in place, and the structure that would be in place if the proposal is adopted, adequately insulates conflict of interest concerns?

Respectfully,

A handwritten signature in cursive script, appearing to read "Kevin R. Bryant".

Kevin R. Bryant
Corporation Counsel

KRB/jkh