

**CITY OF MIAMI**  
**OFFICE OF THE CITY ATTORNEY**  
**MEMORANDUM**

Legal Opinion # 06-001

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**TO:** Rosalie Mark, Director  
Department of Employee Relations

**FROM:** Jorge L. Fernandez, City Attorney (JB)

**DATE:** February 8, 2006

**RE:** Request for Legal Opinion  
**Interpretation of Florida's Anti-nepotism Law**  
Matter ID No. 06-172

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This is in response to your request for a legal opinion concerning the following question:

WHETHER THE ANTI-NEOPOTISM LAW PROHIBITS THE APPOINTMENT OF THE SON OF THE FIRE CHIEF WHERE (1) THE FIRE CHIEF IS NOT VESTED WITH THE AUTHORITY TO APPOINT; AND (2) THE FIRE CHIEF TAKES NO ACTION WHICH IN ANY WAY ADVOCATES THE APPOINTMENT OF THE SON.

The answer to the question presented above is in the negative.

Section 24 of the City of Miami Charter establishes the division of fire, and provides that the fire force shall be composed of a chief and such other officers, firemen and employees as the City Manager may determine. Section 24 of the City of Miami Charter also provides that the members of the fire department, other than the chief, are to be appointed from a list of eligibles prepared by the Civil Service Board and in accordance with such rules and regulations as may be prescribed by said board. Additionally, Section 16 of the City of Miami Charter vests in the City Manager the power to appoint and remove all directors of the departments and all subordinate officers and employees in the classified and unclassified service.

**Section 112.3135(2)(a)**, Florida Statutes, the "anti-nepotism" statute provides:

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. However, this subsection shall not apply to appointments to boards other than those with land-planning or zoning responsibilities in those municipalities with less than 35,000 population. This subsection does not apply to persons serving in a volunteer capacity who provide emergency medical, firefighting, or police services. Such persons may receive, without losing their volunteer status, reimbursements for the costs of any training they get relating to the provision of volunteer emergency medical, firefighting, or police services and payment for any incidental expenses relating to those services that they provide.

**Section 112.3135(1)(c)** defines "public official" to mean:

"Public official" means an officer, including a member of the Legislature, the Governor, and a member of the Cabinet, or an employee of an agency in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals or to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in an agency, including the authority as a member of a collegial body to vote on the appointment, employment, promotion, or advancement of individuals.

The anti-nepotism statute defines "relative" as an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

The Courts have construed Florida's anti-nepotism law so as not to create an unnecessary barrier to public service by otherwise qualified individuals. City of Miami Beach v. Galbut, 626 So.2d 192 (1993). Additionally, several opinions issued by the Attorney General have concluded that the "anti-nepotism" statute is not intended to prevent relatives from working together in public employment, but rather is intended only to prohibit those public officials, who have the power to appoint or promote or recommend their own relatives, from exercising such a power. See, AGO 80-70 (concluding that a town council could appoint the town clerk's brother as maintenance supervisor, since the prospective employee was not related to the officials in whom the appointing or employing power was vested); AGO 77-144 (concluding that a non-related appointing official may hire the relative of an existing department official); AGO 71-158 (concluding that the county engineer could hire a relative of a county commissioner without violating Section 116.111<sup>1/</sup>, but that this county commissioner could not advocate employment of his relative, and would have to abstain from voting on the issue should it come before the board); AGO 74-255 (concluding that Section 116.111 does not prevent a state agency from

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<sup>1/</sup> In 1989, Section 116.111, Florida Statutes, was transferred and renumbered by the Legislature of the State of Florida as section 112.3135, Florida Statutes, and amended to read: 112.3135 [116.111] Restriction on employment of relatives.

employing husband and wife teams so long as the person who hires the couple is related to neither of them, and additionally that it may not allow one spouse to promote or advance the other or to advocate promotion or advancement of the other); AGO 73-397 (concluding that a city may employ the daughter of a police lieutenant as a policewoman even though she would be at times under the supervision of her father, since neither relative possesses the power to appoint, employ, or promote); AGO 71-258 (concluding that a department head having appointing power who is not related to a prospective employee may appoint such a person even though the prospective appointee is related to an existing officer or employee in the department).

The City Charter vests in the City Manager the sole and ultimate responsibility for the appointment of employees, subject only to the merit, fitness and provisions of the civil service rules.<sup>2/</sup> Furthermore, your inquiry indicates that the Fire Chief in no way is advocating the appointment of his son. Your inquiry also indicates that the Fire Chief would not be involved in any evaluation process of his son's performance. The evaluators during the training academy are the instructor staff at the Fire College. The head of the Fire College reports to the Deputy Chief. If the Fire Chief's son successfully completed the new hire training program, he would be assigned to a fire station and the command at the station would be responsible for his performance and evaluations. Based on the provisions of the Charter sections referenced herein and in light of the express provisions of Section 112.3135(2)(a), Florida Statutes, if the City of Miami were to employ the Fire Chief's son, such appointment would not be prohibited by Florida's anti-nepotism law.

JOB/dd

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<sup>2/</sup> Pursuant to Civil Service Rule 7, the Director of the Human Resources Department establishes and maintains such promotional and open registers for the various classes or positions as he/she deems necessary or desirable to meet the needs of the service. Furthermore, Civil Service Rule states in pertinent part that every vacancy in the classified service shall be filled by appointment from the appropriate eligible register. Said rule requires that appointments be made to, or employment shall be given in, all positions in the classified service by selection of persons certified by the Director of the Human Resources Department.