




Board of Ethics

Advisory Opinion no. 2015-2

Date Issued November 4, 2015

This Advisory Opinion is issued by the Durango Board of Ethics under the provisions of Section 2-207 of the City of Durango Ethics Policy. It is intended to be advisory only for the purpose of providing general advice and guidance and it shall not be deemed to impose or authorize the imposition of discipline in any form.



Roger Haar
Board of Ethics, Chairman

Board of Ethics Advisory Opinion:

Because a City Councilor might be subject to a recommendation of disciplinary action by the Board of Ethics, it is essential to eliminate any appearance of impropriety which might arise if a Board of Ethics member has a familial relationship with a City Councilor and is in a position to influence the Ethics Board's decision. This appearance of impropriety exists though there is no strict violation of the Code of Ethics.

There are two reasons for this: First, and most obvious, is the appearance of impropriety which is present anytime a council appoints a family member of a fellow councilor to a Board which may ultimately judge his or her actions. Secondly, the likelihood exists that there is an improper influence that a sitting Board of Ethics member has on other board members by reason of his or her membership. In both cases, even if the Board member recuses himself or herself from the decision, the appearance of impropriety does not go away. Similarly, the influence created by the individual relationships among the Board members cannot be ignored, whether they are positive or negative. For instance, if the family member of a City Councilor sits on the Board of Ethics and a complaint is filed against the Councilor, even if they recuse themselves from the complaint hearing, a Board member who holds a negative opinion of the family member might be influenced against the Councilor; alternatively, a Board member holding a favorable opinion might unfairly give the Councilor the benefit of the doubt. Either way, the process could be tainted by the relationships that exist and could easily be avoided.

Although it may not be possible to avoid an appearance of impropriety that arises out of all relationships, depending on the degree of kinship, it is better to avoid it whenever possible. It is particularly important for there to be a separation of influence and a heightened awareness of the appearance of impropriety in those situations to enhance the public trust.

While the Ethics Board is the most obvious, we believe the need to avoid the appearance of impropriety regarding appointments as discussed herein extends to all Boards and Commissions appointed by City Council.

In our community it is likely that a large number of qualified persons can be found to fill most volunteer positions. Arguably, more citizens will come forward if convinced that the governing bodies uphold the highest ethical standards.

Code of Conduct and Code of Ethics
REQUEST FOR ADVISORY OPINION

Any City Officer or Board or Commission member who is covered by the City of Durango's Code of Conduct and Code of Ethics may submit a written request to the Board of Ethics for an advisory opinion. Advisory opinion requests should outline specific actions or conduct that are relevant to the individuals' official duties and the Code of Conduct or Code of Ethics. Advisory opinion requests must be submitted to the Board of Ethics in advance of any official action. The Board of Ethics may publish advisory opinions to provide general guidance for City Officers and Boards and Commission members.

Official Statement:

Name of the Person Requesting an Advisory Opinion: Dick White

Specifically, I [a City Council Member] seek an advisory opinion on the appropriate procedure for a family member of a City Councilor who applies for a position on a City Board or Commission.

I believe that the Board of Ethics represents a special case, wherein a City Councilor might be the subject of a complaint to the Board of Ethics. In that case, it is obvious that a family member must recuse him or herself from the Board's proceedings. But is the person excluded from serving at all? Again, it is obvious that if the answer is "no," then the City Councilor should take no part in the appointment process--as I did not when the Council appointed (Family Member). Is the concern about appearances so grave that we exclude qualified people from serving the City? Or is the one purpose of the Code of Ethics to make clear the procedures needed to allow individuals to serve, without tainting either their appointment or their subsequent contributions?

I believe that also there is a broader issue to consider, whether family members of Councilors are categorically excluded from service on any Board. If such Boards make recommendations to the Council, could the family member participate? If the Council considers such a recommendation, is the Councilor excluded from the vote? Are some Boards OK and not others? I hope that the Board of Ethics will provide guidance before the next round of annual appointments--and that none of the upcoming special appointments don't fall into this gray area.

For office use only

Received via email on August 13, 2015 by Mary Beth Miles, Assistant to the City Manager.

Action taken: Submitted to the Board of Ethics for review on 9th day of September 2015

Notes: _____
