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STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street  
Carson City, Nevada 89701

February 20, 2024

OPINION NO. 2024-01

CHARTERS; ELECTED OFFICIALS;  
EMPLOYMENT; LOCAL GOVERNMENT;  
NEPOTISM; PERSONNEL; PUBLIC  
OFFICER; STATUTES: NRS 281.210  
prohibits public officers from directly  
employing, or acting as the employing  
authority over, any close relative  
subsequently hired. Where a public officer  
is prohibited by statute or city charter from  
interfering with personnel decisions, he or  
she does not employ or possess employing  
authority over any public employees in  
violation of NRS 281.210.

Nicholas G. Vaskov, City Attorney  
City Attorney's Office  
City of Henderson  
240 S. Water Street, MSC 144  
Henderson, NV 89015

Dear City Attorney Vaskov,

Pursuant to NRS 228.150, you have requested an opinion from this office regarding Nevada's anti-nepotism statute, NRS 281.210, in relation to certain provisions of the Henderson City Charter. Specifically, you have asked whether the hiring of a Henderson City Councilman's son for a position with the Henderson Parks and Recreation Department would violate NRS 281.210.

QUESTION

Whether the City of Henderson may hire a relative within the third degree of consanguinity of an elected member of the Henderson City Council ("City Council") without violating NRS 281.210 where, under the Henderson City Charter, councilmembers are prohibited from hiring or interfering in the hiring of city employees.

### SHORT ANSWER

NRS 281.210 does not prohibit the hiring of a Henderson City Councilman's son for a position with the Henderson Parks and Recreation Department. The Henderson City Charter grants hiring authority with respect to personnel decisions to the Henderson City Manager and prohibits the City Council from interfering with the personnel process.<sup>1</sup> Accordingly, city councilmembers – though they are city officers under NRS 281.210 – do not employ city employees, and do not act as employing authorities as necessary to trigger a violation of Nevada's anti-nepotism statute.

### ANALYSIS

I. Members of the Henderson City Council Are “Officers” Under NRS 281.210, but They Do Not “Employ” Henderson City Employees.

Although all members of the Henderson City Council are “officers” in the context of NRS 281.210, neither the City Council as a whole nor any individual city councilmember directly employs city employees. Thus, the provisions of Nevada's anti-nepotism statute prohibiting public “officers” from employing relatives within the third degree of consanguinity do not bar the City of Henderson from employing a City Councilmember's relative.

NRS 281 defines “public officer” as a “person elected or appointed to a position which: (a) Is established by the Constitution or a statute of this State, or by a charter or ordinance of a political subdivision of this State; and (b) Involves the continuous exercise, as part of the regular and permanent administration of the government, of a public power, trust or duty.” NRS 281.005(1). The Henderson City Council is comprised of four councilmembers and the Mayor. See Henderson City Charter art. II, § 2.010(1). The definition of “public officer” under NRS 281.005(1) applies to both because both positions are 1) established by the Henderson City Charter; and 2) involve continuous exercise of legislative power. Therefore, a Henderson City Councilmember is an “officer” for purposes of NRS 281.210.

NRS 281.210(1) makes it unlawful for a public “officer” to employ a relative within the third degree of consanguinity.

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<sup>1</sup> Except with respect to appointment of the three Executive Officers (City Manager, City Attorney, and City Clerk). See Henderson City Charter art. I, § 1.090.

[I]t is unlawful for any person acting as a . . . state, township, municipal or county officer . . . to employ in any capacity on behalf of the . . . municipality . . . any relative of such a person or of any member of such a board, agency or commission who is within the third degree of consanguinity or affinity.

Here, neither the City Council as a whole nor any individual city councilmember would be directly employing a councilmember's relative. Under the Henderson City Charter, the City Manager would employ the relative without interference or involvement of the City Council.

No Council Member or the Mayor may direct or request the appointment of any person to, or his or her removal from, office by the City Manager or by any of his or her subordinates, or, except as otherwise provided in section 1.090, in any manner take part in the appointment or removal of Executive Officers and employees.

Henderson City Charter art. III, § 3.140(1). This prohibition on any involvement by city councilmembers in hiring or firing city employees renders them unable to "employ" Henderson city employees pursuant to NRS 281.210.

## II. Members of the Henderson City Council Are Not "Employing Authorities" Under NRS 281.210.

This office has issued multiple Attorney General Opinions (AGOs) interpreting hiring and employing authority under NRS 281.210, though they address dissimilar scenarios. Individualized analysis on a case-by-case basis is thus warranted.<sup>2</sup> In general, however, these AGOs have found that public officers and boards can shield themselves from violating NRS 281.210 by hiring or appointing an intermediary to make hiring decisions, unless they effectively are the "employing authorities." Public officers and boards are "employing authorities" only when they retain control over hiring authority.

Here, we focus our analysis on whether the City Council (and by extension, a city councilmember) has retained control over hiring authority and is thus an employing authority. NRS 281.210(1) provides in relevant part:

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<sup>2</sup> To date, Nevada courts have yet to interpret the language of NRS 281.210.

[I]t is unlawful for any person acting as . . . an employing authority of . . . any town, city or county, or for any state or local board, agency or commission, elected or appointed, to employ in any capacity on behalf of the . . . municipality . . . any relative of such a person or of any member of such a board, agency or commission who is within the third degree of consanguinity or affinity.

Accordingly, if a city councilmember is acting as an “employing authority” of the City of Henderson to employ a councilmember’s son with the City of Henderson Parks and Recreation Department, this would violate NRS 281.210.

This office retains its opinion that “[t]he evil contemplated by the Legislature [in enacting NRS 281.210] was the packing of state employment with relatives of those having the appointing power, thus denying an equal opportunity to those not in the same category. [O]ne is less disposed to fire a relative regardless of ability, than to dispense with the services of one not so related.”<sup>3</sup> On that basis, we have issued two opinions involving situations where the incumbent public employee was removed by at least one degree of separation from the hiring authority directing the hiring process of public employees or appointees.

In 1979, we opined:

[A] board cannot insulate itself from the Anti-Nepotism Law by hiring an employee who would then hire all employees for the district. This is because the ultimate hiring authority would still lie with the board, which would have the right at any time to intervene in or revoke the hiring employee's powers.<sup>4</sup>

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<sup>3</sup> Op. Nev. Att’y Gen. 656 (April 9, 1970).

<sup>4</sup> Op. Nev. Att’y Gen. 79-B (April 23, 1979) (note that this Supplemental Opinion is not listed in the Syllabi of Attorney General's Opinions in the 1979 volume of the Official Opinions of the Attorney General. However, the opinion is published at page 164 of that volume).

We reaffirmed this reasoning in 2000, when we opined that the Churchill County Manager's daughter could not be lawfully hired by the county's Planning Director for a county position.<sup>5</sup> We reasoned that, for the purposes of NRS 281.210, the County Manager holds employing authority over all county employees, even when the hiring is conducted by another appointee. Because NRS 244.135(2) grants the County Manager power to appoint a Planning Director, the County Manager exercises continuing control over the Planning Director.

Considering these prior opinions, it has been the longstanding position of this office that a public official retains employing authority irrespective of his or her degree of separation from the hiring authority if said official has power to intervene in, revoke, or in some other way control the hiring authority's powers. Nevertheless, this degree of control necessarily requires both the public official and the hiring authority to exist within the same line of supervision.

As noted above, the hiring authority here is the City Manager, along with the subordinate director of the Parks and Recreation Department. A city councilmember and City Manager, as officers of the legislative and executive departments of the city,<sup>6</sup> do not exist within the same line of supervision necessary to trigger a violation of NRS 281.210.

Most importantly, although the Henderson City Charter grants some degree of control by the City Council over the City Manager,<sup>7</sup> the City Manager's hiring authority remains exclusive; in fact, the City Council is expressly prohibited from interfering with the City Manager's hiring and termination decisions:

No Council Member or the Mayor may direct or request the appointment of any person to, or his or her removal from, office by the City Manager or by any of his or her subordinates, or, except as otherwise provided in section 1.090, in any manner

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<sup>5</sup> Op. Nev. Att'y Gen. 26 (November 1, 2000).

<sup>6</sup> Henderson City Charter art. II, § 2.010, art. III, § 3.020.

<sup>7</sup> See Henderson City Charter art. III, § 3.030 (City Council has the power to remove the City Manager for cause); Henderson City Charter art. III, § 3.020 (City Council has the power to designate the City Manager's administrative and executive duties and set the City Manager's salary).

take part in the appointment or removal of Executive Officers and employees.<sup>8</sup>

Moreover, the City Council is prohibited from interfering with the City Manager's personnel matters in general:

Except for the purpose of inquiry, the Council and its members shall deal with employees solely through the City Manager, City Attorney or City Clerk, as applicable, or their designees. Neither the Council nor any member thereof may give orders to any subordinate of the City Manager, City Attorney or City Clerk, either publicly or privately.<sup>9</sup>

Therefore, the City Council holds no sway over the City Manager as the chief executive officer of the city with respect to hiring city personnel. Accordingly, the City Manager, not the City Council or its members, is the employing authority for purposes of NRS 281.210. Where the incumbent public official is not the employing authority, there is no violation of Nevada's anti-nepotism statute.

#### CONCLUSION

The hiring of the Henderson City Councilman's son for a position with the City's Parks and Recreation Department would not violate NRS 281.210.

AARON D. FORD  
Attorney General

By:   
ALINA KRAUFF  
Deputy Attorney General

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<sup>8</sup> Henderson City Charter art. III, § 3.140(1).

<sup>9</sup> Henderson City Charter art. III, § 3.140(2).



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STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

555 E. Washington Ave., Suite 3900  
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June 21, 2024

OPINION NO. 2024-02

**BOARDS & COMMISSIONS;**  
**NURSES/NURSING/STATE BOARD**  
**OF NURSES; PERSONNEL; TERM**  
**LIMITATIONS:** All time served by a member of a Title 54 regulatory body, whether serving an unexpired term or a full term, counts toward the total term limitation contained in NRS 622.207.

Susan S. VanBeuge, DNP, APRN, FNP-BC, FAANP  
Board President  
Nevada State Board of Nursing  
5011 Meadowood Mall Way, #300  
Reno, NV 89502

Dear Ms. VanBeuge,

Pursuant to NRS 228.150, you have requested an opinion on whether the time served under your appointment to fill in another member's unexpired term would count toward your own appointment in calculating the maximum term limit of 12 years. The provisions of NRS 232A, NRS 622 and NRS 632 address how long a member can serve on the Board.

You write that you were appointed to the Nevada State Board of Nursing ("Board") on March 30, 2015, to fill another member's unexpired term. You were in this position for 19 months before you applied and were appointed to the Board in 2016. You were reappointed in 2020, and your current term expires October 31, 2024. If you were to be reappointed to the Board when your current term expires, your total service in this position at the end of that final term would exceed 12 years—if your initial appointment to fill another member's term counts toward calculating your own total service on the Board. This opinion will address that specific issue.

### **QUESTION**

Whether the time served on the Board to fill in another member's term counts toward calculating the total term time for appointment on the Board?

### **SHORT ANSWER**

Yes. NRS 622.207's total term limit of 12 years served at the time of final appointment includes any time served fulfilling an unexpired term.

### **ANALYSIS**

Answering this question requires analyzing NRS chapters 232A, 622 and 632. "The construction of a statute should give effect to the Legislature's intent." *Richardson Constr., Inc. v. Clark Cty. Sch. Dist.*, 123 Nev. 61, 64 (2007). If the statute's text is unambiguous, that ends the inquiry. *Id.* If not, the statute must be examined "in the context of the entire statutory scheme, reason, and public policy to effect a construction that reflects the Legislature's intent." *Id.*

Regardless of whether a person is appointed to a new term or to fill a vacancy on a board, commission or similar body by the Governor, the person must meet the same qualifications set by NRS 232A. Any vacancy must be filled by the Governor for the remainder of the unexpired term. NRS 232A.020(4). The statute defines a vacancy on a board, commission, or similar body as "when a member dies, resigns, becomes ineligible to hold office or is absent from the State for a period of 6 consecutive months." NRS 232A.020(3). NRS 232A does not address how filling a vacancy is calculated toward total service on a board.

NRS 622.207(1), enacted in 2017, applies to all Title 54 professional licensing boards and states, "a person may not be appointed as a member of a regulatory body if the person has served as a member of that regulatory body, or at the expiration of his or her current term if he or she is so serving will have served, 12 years or more at the time of his or her appointment." The language "has served as a member of that regulatory body" does not limit itself to partial or whole terms, but instead encompasses all time serving as a member of the body.

Regarding the Nursing Board, NRS 632.030(5) states that "[e]ach member of the Board shall serve a term of 4 years. If a vacancy occurs during a member's term, the Governor shall appoint a person qualified under this chapter to replace that member for the remainder of the unexpired term."

Prior to 2021, NRS 632.030 contained a provision specifying that only service of two or more years filling an unexpired term would constitute a term. The provision also limited members to a total of two consecutive terms. However, in response to NRS 622.207's enactment in 2017, the Nevada Legislature removed this provision from NRS 632 in 2021. Minutes of the Assembly Committee on Commerce and Labor, 81st Legislative Session of Nevada at 4 (Feb. 22, 2021). NRS 632 no longer addresses how filling a vacancy is calculated toward total service on the Board.


Since NRS 632 does not specify a stricter term limitation than NRS 622, the total 12 years prior to final appointment limit of NRS 622.207 applies to your question.

In your particular case, even though your previous 19 months of service filling an unexpired term does count toward NRS 622.207's 12-year limitation, NRS 622.207 does not bar the Governor from reappointing you for another 4-year term at the expiration of your current term in October 2024. This is because, at the time of your reappointment (the relevant time under NRS 622.207), you will have served only 9 years and 7 months total (two 4-year terms plus 19 months), below NRS 622.207's 12-year limitation.

#### CONCLUSION

As discussed above, any time served by a member of a regulatory body during a partial or unexpired term counts toward the total term limitations contained in NRS 622.207.

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By:   
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