

BERNALILLO COUNTY CODE OF CONDUCT REVIEW BOARD

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Advisory Opinion 2016-003

Commissioner Hart Stebbins:

You requested an Advisory Opinion from the Code of Conduct Review Board (the “Board”) concerning a public servant’s obligations under the Bernalillo County Code of Conduct (the “Code”) related to improper influence as noted in Section 2-130(b). Specifically, the question is captured in the following:

“Whether it violates any provision of the Code of Conduct for a commissioner to give the county manager and county staff input and/or feedback related to job criteria and/or qualifications for newly created positions and implementation for a newly created program within the County organizational structure?”

Code Provisions:

This question requires the Board to analyze Section 2-130(b) of the Code. This section of the Code states:

(b) *Improper influence.* No public servant shall make, participate in making or in any way attempt to use his or her position to influence any county governmental decision or action in which he knows, he or she has reason to know, or should know that he or she has any substantial interest. No county commissioner shall make, participate in making or in any way attempt to use his or her position to influence any hiring decision or other decision regarding employment for any county employee, except for appointees of the county Commissioners, the county manager, the county attorney and the fire chief. The prohibition does not prohibit:

- (1) A county commissioner from being listed as a reference for an applicant seeking employment with the county; or
- (2) A county commissioner from participating in and making comments during any concurrence process related to the selection of deputy county managers the public information officer, human resources director and the director of the economic development office; or
- (3) A county commissioner raising his or her concerns regarding the performance or conduct of a deputy county manager or department director with the county manager, or stating his or her

satisfaction, dissatisfaction, compliment, criticism or concern regarding the actions of a deputy county manager or department director publicly; or

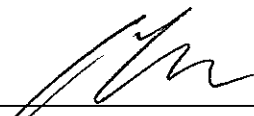
(4) A county commissioner notifying the county manager or county attorney, in a confidential communication, of allegations of poor employee performance or employee misconduct and requesting appropriate investigation and action if found by the county manager to be warranted.

Analysis:

In addressing this question, the Board will only look to the question posed and attempt to give meaning to the operative language of “. . . participate in making or in any way attempt to use his or her position to influence any hiring decision or other decision regarding employment for any county employee. . .” Initially, it appears that this language in the Code is an attempt to prevent Commissioners from engaging in the hiring process for County employees other than those enumerated in Section 2-130(b). This degree of separation is an attempt to distinguish the role of Commissioners from the role of the County Manager, Deputy County Managers or directors in the hiring process. While the above language does not specifically prohibit a Commissioner from giving “input” to either the County Manager or staff on a job description, this language does appear to suggest that Commissioners should avoid any appearance or perception that they are somehow guiding or attempting to tailor the hiring process towards a particular applicant or potential applicant. However, the Commissioner who has been requested by county management to provide input for what should be included or not included in a job description for a newly created position is not attempting to influence a hiring decision. That Commissioner is providing policy guidance on how a particular job would implement the policy behind its creation.

Conclusion:

A Commissioner who responds to a request by county management for input relating to a newly created job description is not influencing the hiring process by doing so. Our opinion is limited to the facts in this request for an advisory opinion. Facts relating to Commissioners’ role in the hiring process must be taken on a case by case basis.



Alan Packman, Chair
Bernalillo County Code of Conduct Review Board

10/4/16
Date