



## ADVISORY OPINION

**TO:** Yvonne Flores-Cale, Council Member, City of Kyle

**FROM:** Doug Montgomery, Ethics Compliance Officer

**DATE:** March 31, 2022

**RE:** Appointment or employment of relatives

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**Question presented:** Within the context of Section 2.05 of the City of Kyle Personnel Policy, can City Council nominate or appoint an in-law of an elected city official?

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Section 2-172. – Unfair advancement of private interests is likely the applicable section of the Code of Ethics for this scenario. Subsection (b)(3), would seem to be the possible ethical rule that may apply. That subsection states:

*“Appointment of relatives. A city officer or employee shall not appoint or employ or vote to appoint or employ any relative within the third degree of consanguinity or affinity to any office or position of employment within the city.”*

My analysis is as follows:

First, a potential violation of the personnel policy is not necessarily a violation of the Code of Ethics. The jurisdiction of the Ethics Commission extends to violations of 2-172, but not to the personnel policy. However, there may be other remedies outside of the Ethics Commission to address that possible policy violation. I would recommend that you reach out to your City Attorney if you wish to explore those options.

Second, absent any clarifying language, the text of 2-172(b)(3) prohibits the city officer or employee from appointing or employing (or voting to appoint or employ) any relative within the third degree of consanguinity or affinity to any office or position of employment, but the ordinance does not appear to prohibit others from appointing or voting to appoint/employ the relative. In other words, if the city officer or employee recuses themselves from the appointment as well as the vote, then the act of appointment would not appear to be a violation of the Code of Ethics.

Also, the type of in-law is important, and changes the answer based on whether we are talking about the Code of Ethics or the personnel policy. In the Code of Ethics, a third degree of affinity includes grandparents-in-law, brothers/sisters-in-law, and grandchildren-in-law, as well as closer individuals such as parents/children-in-law (second degree of affinity). However, in the personnel policy, the prohibition only extends to the second degree of affinity.

In other words, if a councilmember appointed, or voted to appoint, their brother-in-law, then that person would be within the third degree of affinity and the councilmember would have likely violated the code of ethics. However, they would not have committed a violation of the personnel policy because the person appointed is outside of the second degree of affinity.

Sticking with that scenario, if the councilmember recused themselves from the appointment and vote, but the rest of the body voted to appoint the brother-in-law, then there would not be a violation of the Code of Ethics or the personnel policy.

I hope this analysis was helpful and clear enough. Please let me know if you have additional questions or want me to expand on the different types of scenarios.

End of Opinion.