

ASK THE CITY ETHICIST

Referring a Friend

by
Alex Kipp

Question: *I work as a Principal Administrative Associate in the HR Unit of a City agency. I recently posted a job vacancy notice on our website for a Substance Abuse Counselor. I have a friend that I used to work with who'd be perfect for the job. I was thinking of referring her. My co-worker, however, told me I could not make the referral. When I asked why, he said I would be committing an act of nepotism, and nepotism is illegal. Is this true?*



Answer: It is true that certain kinds of favoritism are illegal under Chapter 68 of the City Charter, the City's Conflicts of Interest Law, however, I'm not sure that the referral you mention would be. Let's first take a look at what nepotism is, and how it is addressed by the law.

According to the American Heritage Dictionary of New Cultural Literacy, 3rd Edition, nepotism is "favoritism granted to relatives or close friends, without regard to their merit. Nepotism usually takes the form of employing relatives or appointing them to high office." Nepotism often invokes the idea of someone using their government office to obtain a position for a relative or friend in a way that by-passes a transparent, fair, merit-based hiring system. Nepotism runs counter to fairness, and threatens to turn the workings of government into a family-run business, where raises, promotions, and assignments are determined more by birthright than by quality of labor.

Interestingly enough the word, "nepotism" does not appear anywhere in Chapter 68. This is because Chapter 68 deals with the concept in a slightly different manner that both widens and limits the scope of the above definition. Under Chapter 68, no public servant is allowed to use their City position for their own personal benefit, nor are they allowed to do so for anyone with whom they are *associated*. Once we know who is an associate, then we'll be able to determine whether or not you can make the referral.

"Associate" is defined in Chapter 68 as a spouse, domestic partner, child, parent or sibling of a public servant; a person with whom a public servant has a business or other financial relationship; and each firm in which a public servant has a present or potential interest. That's a pretty specific list. Notice there is no mention of "friends" in it. Notice also how it includes firms and people with whom you have a financial relationship. Why? Normally, when we think

of nepotism, we probably think of hooking up our kids or siblings, or our high-school locker partners. We might not think of our landlords or tenants, employees of our outside businesses, or investing partners. But, just imagine the scandal if you helped recommend and hire a guy you owed a \$10,000 debt, or a roommate who's behind on the rent.

And I think there's probably a good reason why "friend" isn't listed as an associate. First of all, how do you define friend? Is there a minimum amount of time you have to spend together? Are there certain activities that prove friendship and others that do not? It's easier to define relatives and people with whom you have a financial relationship.

So, now to your friend. If this friend of yours is in no way *associated* with you—you don't owe the friend money, s/he's not your business partner, or your current roommate, or does not in any other way have a financial relationship with you--then referring your friend is fine. Some might even say you're doing the agency a favor by helping to find qualified people to work there.

Now, does that give you the go-ahead to misuse your City position to get your friend some sort of unfair advantage? Of course not. Your friend has to go through the hiring and interviewing process like anyone else. And in order to ensure a sense of fairness and transparency, you'd probably want to let your boss know that your friend was applying for the job, so your boss could decide whether to take you out of the hiring process. But if that friend was an *associate*, as defined above, you couldn't refer that friend or take ANY action involving the entire hiring process.

If you want more information on how the City's Conflicts of Interest Law works and how to stay in compliance, please call the COIB during normal business hours and ask to speak to the Attorney of the Day. All calls are confidential and you may even do so anonymously.
212.442.1400. www.nyc.gov/ethics

Alex Kipp is Director of Training & Education for the New York City Conflicts of Interest Board.