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Councilman Brent Ackerson, Chair
Government Oversight/Audits & Appointments Committee

Via email: Brent.Ackerson@louisvilleky.gov

Re: GOAC Appointment question

Dear Chairman Ackerson:

Per your request, I have researched the issue of whether Councilman Benson may vote for his daughter, Laura Benson Jones, when her nomination to the Louisville Regional Airport Authority Board comes before the Council. Regrettably, based on a reading of the ordinance, our conclusion is that the Louisville Metro Ethics Code does not allow a Council member to participate in the appointment of a family member to a board or commission.

The applicable Ethics Code provision is LMCO §21.02(B) which states:

(B) No Metro Officer shall act in his or her official capacity in any matter where such officer, a member of his or her family, or a business organization in which such officer has a financial interest or private interest that might reasonably be expected to impair his or her objectivity or independence of judgment.

Board membership constitutes a “private interest” under the Ethics Code.¹

“Family member” is defined in LMCO §21.01 as:

An individual with any of the following relationships to the Metro Officer:

1. Spouse or domestic partner;
2. The parents of the Metro Officer or a spouse or domestic partner;

¹ “Private interest” is defined in LMCO Sec. 21.01 as: Employment, board membership, or participant in the management and/or operations of an entity by a Metro Officer or family member of a Metro Officer.

3. Sons and daughters, and their spouses or domestic partners;
4. Immediate relatives² and their spouses or domestic partners; and
5. Any individual related by kinship³, **or** whose close association with the Metro Officer is the equivalent of a familial relationship, including but not limited to individuals: living in the Metro Officer's household, or is a person claimed by a Metro Officer or a Metro Officer's spouse or domestic partner as a dependent for tax purposes. (emphasis added).

By its express terms, the definition of family member is quite broad. Subsections (1)-(4) describe individuals routinely thought of as family members, as does the first clause of subsection (5) -- an individual related by kinship. These individuals -- which include parents, sons, daughters, aunts, uncles, nieces, nephews, grandparents, great-grandparents, grandchildren -- and their spouses or domestic partners -- are "family members" without reference to where they live or their tax dependent status.

The second clause of subsection (5) brings into in the definition of family member "any individual ... whose close association with the Metro Officer is the equivalent of a familial relationship." Factors to consider in determining whether that association rises to the level of a familial relationship "include but are not limited to" whether the person lives in the Metro Officer's Household or is claimed as a dependent for tax purposes by the Metro Officer or their spouse or domestic partner.

For these reasons, we believe the Louisville Metro Ethics Code prohibits Councilman Benson from voting on his daughter's board nomination. We recommend that the legislation be sent to old business so Councilman Bensen may abstain from voting on this legislative matter.

As you are aware, the Ethics Commission is charged with interpreting the Ethics Code. JCAO may offer only informal advice on ethics matters, which would provide no protection in the event of a complaint. Please let me know if you have any additional questions regarding this matter.

Sincerely,

/s/ Nicole H. Pang

Nicole H. Pang
Assistant County Attorney

cc: GOAC Committee Members

² "Immediate Relative" is defined in LMCO §21.01 as: Any individual related by kinship, which includes, but is not limited to: grandparents, great-grandparents, brothers, sisters, aunts, uncles, nieces, nephews, grandchildren, parents of grandchildren and spouses or domestic partners thereof.

³ "Kinship" is defined as LMCO §21.01 as: Relationship by blood, marriage, civil union, or adoption.