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City of San Luis

January 28, 2002

**PRIVILEGED & CONFIDENTIAL
ADVICE OF COUNSEL**

Mr. Alex Ruiz
City Manager
City of San Luis
P.O. Box 1170
San Luis, Arizona 85329

Re: Anti-Nepotism Rules for City Employees

Dear Mr. Ruiz:

As you know, this firm represents the City of San Luis in employment and labor matters. An issue has been raised regarding a possible violation of the Arizona state nepotism statute. Specifically, it appears that, since October 3, 2001, Assistant Fire Chief Othon Luna has been in a direct supervisory relationship to his brother, Tomas Luna, who was promoted to Acting Captain on that date. As explained below, the promotion and/or direct supervision of a relative may constitute a violation of Arizona Revised Statutes § 38-481 (the "Anti-Nepotism Rule" or the "Rule").

The Anti-Nepotism Rule recognizes that placing a person in direct supervisory control over another employee who is that person's close relative may lead to claims of favoritism. Such claims, whether or not justified, may have a substantial adverse effect upon general employee morale and a consequent loss of efficiency. In recognition of the validity of this consideration, many states, such as Arizona, have adopted "anti-nepotism" legislation that prohibits the employment of close relatives in the same employee unit. For the same reasons, the City of San Luis is currently in the process of formalizing its own anti-nepotism rule.

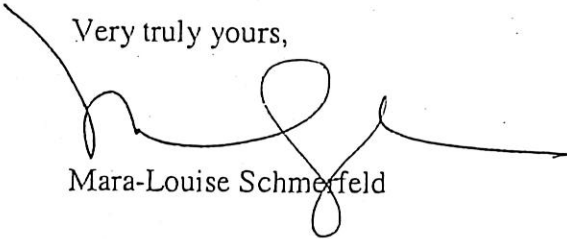
The Rule prohibits covered individuals from having any role in an "appointment" of a person related to him "by affinity or consanguinity within the third degree." A.R.S. § 38-481(A). (While certain familial relationships must be closely analyzed to determine whether it is covered by the rule, the relationship between brothers is clearly covered). The term, "appointment" is broadly defined to include an

appointment to any "clerkship, office, position, employment or duty." A.R.S. § 38-481(C). Because of this broad definition, a direct supervisory relationship will almost certainly involve multiple, unavoidable "appointments" (such as assignments, promotions and raises). For this reason, the direct supervisory relationship that currently exists between Othon and Toman Luna threatens to violate of the Anti-Nepotism Rule.¹ Any person who violates the Rule by improperly "appointing" a relative, as described above, is guilty of a class 2 misdemeanor. A.R.S. § 38-481(B).

For these reasons, we recommend that the reporting structure between the two Luna brothers here be altered such that Othon Luna has no participation in decisions effecting Tomas Luna's employment, including but not limited to his assignments, promotions, or salary adjustments.

Please do not hesitate to contact of with any questions or comments you may have.

Very truly yours,



Mara-Louise Schmerfeld

MLS/aa

¹ We have also analyzed whether the Luna's reporting structure violates the state conflict of interest statute. While we do not believe this to be the case, we note that conflict of interest scenerios must be analyzed on a case-by-case basis, and encourage you to report any potential violations to the attention of the City Attorney.