OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable O. E. Gerron
County Attorney
Ector County
Odessa, Texas

Dear Sir:

Opinion No. O-1954
Re: Is the brother-in-law of a county commissioner ineligible to hold the position of deputy in the sheriff-tax assessor and collector's office?

Your request for opinion upon the above stated question has been received and carefully considered by this department.

Article 432 of the Penal Code of Texas reads as follows:

"No officer of this State or any officer of any district, county, city precinct, school district, or other municipal subdivision of this State, or any officer or member of any State, district, county, city, school district or other municipal board, or judge of any court, created by or under authority of any general or special law of this State, or any member of the Legislature, shall appoint, or vote for, or confirm the appointment to any office, position, clerkship, employment or duty, of any person related within the second degree by affinity or within the third degree by consanguinity to the person so appointing or so voting, or to any other member of any such board,

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> the Legislature, or court of which such person so appointing or voting may be a member, when the salary, fees, or compensation of such appointee is to be paid for, directly or indirectly, out of or from public funds or fees of office of any kind or character whatsoever."

Article 3902, Revised Civil Statutes of Texas, provides the means by which a district, county or precinct officer may obtain the services of deputies and the pertinent parts thereof are as follows:

> "Whenever any district, county or precinct officer shall require the services of deputies, assistants or clerks in the performance of his duties he shall apply to the County Commissioners' Court of his county for authority to appoint such deputies, assistants or clerks, stating by sworn application the number needed, the position to be filled and the amount to be paid. Said application shall be accompanied by a statement showing the probable receipts from fees, commissions and compensation to be collected by said office during the fiscal year and the probable disbursements which shall include all salaries and expenses of said office; and said court shall make its order authorizing the appointment of such deputies, assistants and clerks and fix the compensation to be paid them within the limitations herein prescribed and determine the number to be appointed as in the discretion of said court may be proper; provided that in no case shall the Commissioners' Court or any member thereof attempt to influence the appointment of any person as deputy, assistant or clerk in any office. Upon the entry of such order the officers applying for such assistants, deputies or clerks shall be authorized to appoint them; provided that said compensation shall not exceed the maximum amount hereinafter set out. The compensation which

> may be allowed to the deputies, assistants or clerks above named for their services shall be a reasonable one, not to exceed the following amounts: . . ."

Under the provisions of Article 3902, supra, the county officer desiring deputies, makes the application outlined in said article to the commissioners' court for the authority to appoint such deputies. The commissioners' court grants the authority to appoint the officer and sets the salary before the appointment is made. The commissioners' court has no authority to attempt to designate whom the officer shall appoint and is specifically forbidden to do so by this article. The commissioners' court does not confirm the appointee.

On February 9, 1932, this department held, in an opinion by Honorable R. G. Waters, Assistant Attorney General, that it was not a violation of the nepotism law for a tax collector to appoint as his assistant or deputy a son of a county commissioner after the commissioners' court had authorized the appointment of such deputy in accordance with Article 3902, Revised Civil Statutes of Texas.

On March 2, 1935, this department held in an opinion by Honorable C. M. Kennedy, Assistant Attorney General, that a deputy sheriff who is a first cousin of one of the members of the commissioners' court would not be prohibited from serving as such nor did his appointment by the sheriff violate the terms of Article 432, Penal Code of Texas, nor the allowance of his salary by the commissioners' court constitute a violation of such nepotism law because the commissioners' court did not appoint or vote for or confirm the appointment of such deputy sheriff.

On December 29, 1936, this department held in an opinion by Honorable William McCraw, Attorney General of Texas, that the appointment of an uncle of one of the members of the commissioners' court as assistant district attorney was not a violation of the nepotism law of the State of Texas.

Opinion No. O-480 of this department holds that it is not a violation of the nepotism law for the district clerk to hire as his deputy a daughter of a county commissioner.

Opinion No. O-875 of this department holds that it is not a violation of the nepotism law for the district clerk to appoint as his deputy a sister of the acting county judge of the county.

You are therefore respectfully advised that it is the opinion of this department that your question should be answered in the negative and it is so answered.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By Wm. J. Fanning

Wm. J. Fanning
Assistant

WJF:LW

APPROVED FEB 23, 1940

Gerald C. Mann

ATTORNEY GENERAL OF TEXAS

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