



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Fred Erisman  
Criminal District Attorney  
Longview, Texas

Dear Sir:

Attention: Mr. Ralph Prince

Opinion No. O-270E

Re: Degree of relationship between city commissioner and prospective appointee to office of city health doctor, such as being married to sisters.

You ask, in your letter of August 30, 1940, the opinion of this Department upon the following question:

"May a person be appointed to the office of City Health Doctor whose relationship by affinity to one of the City Commissioners is as follows: The Commissioner and the prospective appointee are married to sisters."

The principles involved in the determination of this question are discussed at length in our opinion No. O-2225, copy of which is attached hereto. In computing the relationship by consanguinity, the method is to discover the common ancestor and count down the longest line from him, each generation removed from the common ancestor constituting a degree. The common ancestors of the two sisters involved in your question are, of course, their parents; the sisters are one generation removed from their common ancestors, so that their relationship is by consanguinity in the first degree.

As to the relationship by affinity, the rule is that the husband stands in the same degree of relationship to the blood relatives of the wife, by affinity, as does the wife by consanguinity. Thus each of the males involved is related to the wife's sister in the first degree by affinity.

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Each of the principles above enunciated were discussed in opinion No. 0-2225, with reference to authorities. The more serious question involved was likewise decided in that opinion: whether, admitting their relationship to the blood relatives of their respective wives by affinity, the two husbands were related to each other by affinity. Though recognizing an apparent conflict between our courts of civil and our courts of criminal jurisdiction, the one following the majority rule holding that the two husbands are not related, the other adopting the minority rule that the husbands are related to each other by affinity within the same degree that each bears to the sister of his wife, we felt constrained, because the enforcement of our nepotism law is committed to our courts of criminal jurisdiction, to announce that the rule adopted by the Court of Criminal Appeals in the Stringfellow case, referred to in opinion No. 0-2225, governs.

We adhere to the views expressed in that opinion. You are therefore advised that the City Commissioner and the prospective appointee are related to each other within the first degree by affinity. Article 432 and Article 433, of our Penal Code, therefore, prohibits the appointment.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

*R. W. Fairchild*

R. W. Fairchild  
Assistant

RWF:LM

ENCLOSURE

APPROVED SEP 9, 1940

*George B. Mason*  
ATTORNEY GENERAL OF TEXAS

