



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable H. L. Mills, Chairman  
Teacher Retirement Board  
1600 Washington Avenue  
Houston, Texas

Dear Sir:

Opinion No. 0-3996

Re: (1) Whether member of Legislature may serve as Executive Secretary for Teacher Retirement System;  
(2) Whether husband of first cousin of member of Teacher Retirement Board may be appointed Executive Secretary.

We have received your letter of recent date which we quote in part as follows:

"First, would a member of the House of Representatives or a member of the Senate at the present time be eligible to serve as Executive Secretary for the Teacher Retirement System, provided said member of the House or Senate might receive a majority vote of the State Board of Trustees electing such person to said office? The second question on which I need advice is: would it, in your opinion, be legal for a member of the Teacher Retirement Board to vote for a person for the position of Executive Secretary who was related to said member in the degree of first cousin by marriage?"

The Teacher Retirement Act was passed by the 45th Legislature (Acts 1937, 45th Leg., R. S., Ch. 470, S. B. 47). Subsection (8) of Section 6 of the Act (Article 2922-1, Section 6, Subsection (8), Vernon's Annotated Civil Statutes) provides for the appointment of an Executive Secretary. Said subsection reads as follows:

"The State Board of Trustees shall elect from its membership a Chairman and shall by a majority vote of all its members appoint an Executive Secretary who shall not be one of its members. Provided that the Executive Secretary appointed under the provisions of this Act shall be confirmed by a two-thirds vote of the Senate present, and provided further that said Executive Secretary shall have been a citizen of Texas three (3) years immediately preceding his appointment. He shall recommend and nominate to the State Board of Trustees such actuarial and other service as shall be required to transact the business of the Retirement System. The compensation of all persons engaged by the State Board of Trustees, and all other expenses of the Board necessary for the operation of the Retirement System, shall be paid at such rates and in such amounts as the State Board of Trustees shall approve, provided that in no case shall they be greater than that paid for like or similar service of the State of Texas." (Emphasis supplied)

Provision is made in the above quoted statute for appointment of Executive Secretary with confirmation by the Senate. Section 18 of Article III of our Constitution reads in part as follows:

" \* \* \* no member of either House shall, during the term for which he is elected, be eligible to any office or place, the appointment to which may be made, in whole or in part, by either branch of the Legislature. \* \* \* "

This department held in our Conference Opinion No. 3076 (Opinion No. C-1092) that confirmation by the Senate was part of an appointment; therefore, under Section 18 of Article III the Legislator is not eligible for appointment as Executive Secretary.

It was also held in the opinion that the ineligibility of the Legislator extends through the entire term for which he was elected and that his resignation from office would not remove his ineligibility. We quote from the opinion as follows:

"The ineligibility of the Legislator to such office or place extends throughout the entire period of time assigned by the people to the office of member of the Legislature, to which he was elected. Such ineligibility may not be removed by resignation from the office, for the Constitution does not provide that it shall continue only during such a period of time as he is a member of the Legislature, or during the period of time that he actually served as such, but expressly provides that the ineligibility shall endure 'during the term for which he is elected.'"

We will not discuss this point any further for the reason that the issues involved are fully discussed in the opinion. We enclose herewith a copy of the opinion.

We answer your first question, therefore, as follows: A member of the Legislature is not eligible for appointment as Executive Secretary of the Teacher Retirement System.

We will now turn our attention to your second question. You ask whether a member of the Teacher Retirement Board may vote for a person for the position of Executive Secretary who is the husband of the member's first cousin.

Subsection 8 of Section 6 of Article 2922-1, above quoted provides that the Teacher Retirement Board "shall by a majority vote of all its members appoint an Executive Secretary who shall not be one of its members."

Articles 432 and 433, Penal Code of Texas, read respectively as follows:

"Article 432. 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

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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, 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." (Emphasis supplied)

"Article 433. The inhibitions set forth in this law shall apply to and include the Governor, Lieutenant Governor, Speaker of the House of Representatives, Railroad Commissioners, heads of departments of the State government, judges and members of any and all Boards and courts established by or under the authority of any general or special law of this State, members of the Legislature, mayors, commissioners, recorders, aldermen and members of school boards of incorporated cities and towns, public school trustees, officers and members of boards of managers of the State University and of its several branches, and of the various State educational institutions and of the various State eleemosynary institutions, and of the penitentiaries. This enumeration shall not be held to exclude from the operation and effect of this law any person included within its general provisions." (Emphasis supplied)

It is manifest from a reading of these Articles that a person may not be appointed Executive Secretary if he is related to a member of the Teacher Retirement Board within the third degree by consanguinity or within the second degree by affinity.

The manner in which degree by consanguinity is to be computed was stated in *The Tyler Tap R.R. Co. and James P. Douglass v. John P. Overton*, 1 Tex. Ct. App. 267, Secs. 533-535, as follows:

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"In computing the degree of lineal consanguinity existing between two persons, every generation in the direct course of relationship between the two parties makes a degree, and the rule is the same by the civil and common law. The mode of computing degrees of collateral consanguinity at the common and by the canon law is to discover the common ancestor, to begin with him and reckon downwards, and the degree the two persons, or the more remote of them, is distant from the ancestor, is the degree of kindred subsisting between them. For instance, two brothers are related to each other in the first degree because from the father each one of them is one degree. An uncle and nephew are related to each other in the second degree, because the nephew is two degrees distant from the common ancestor, and the uncle is extended to the remotest degree of collateral relationship."

Thus, the member of the Teacher Retirement Board and his first cousin are related by consanguinity in the second degree.

Degrees of affinity are computed in the same way as these of consanguinity. In other words, the relatives of the wife are in the same degree of affinity to the husband as they are related to the wife by consanguinity. 2 C.J.S. 992; 2 C.J. 379; State v. Hooper, 37 Pac. 52; Kelly v. Neely, 12 Art. 657, 56 Am. D. 288; Paddeck v. Wells, 2 Barb. Ch. (N.Y.) 331. It follows that the member of the Teacher Retirement Board is related to his first cousin's husband by affinity in the second degree.

In view of the foregoing, you are respectfully advised that the husband of the first cousin of a member of the Teacher Retirement Board may not be appointed to the position of Executive Secretary of the Teacher Retirement System. Your question is, therefore, answered in the negative.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Glenn R. Lewis*  
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APPROVED SEP 24, 1941

*Frederic B. Mann*  
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