



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable L. J. Wardlaw  
Livestock Sanitary Commission of Texas  
2002 W. T. Waggoner Building  
Fort Worth, Texas

Dear Mr. Wardlaw:

Opinion No. 0-5506

Re: Employment of husband and wife  
in departments of State govern-  
ment, under paragraph 21, Sen-  
ate Bill 332, Acts 48th Legis-  
lature, Regular Session.

Your letter of recent date submits the following  
question for the opinion of this department:

Under paragraph 21, of Senate Bill 332, Acts 48th  
Legislature, may a husband be employed in one of the State  
departments embraced in the departmental bill, if the wife  
is employed in one of the educational institutions, appro-  
priations for which are made in another bill?

The paragraph of the bill prohibiting employment  
of both husband and wife in the departments of the State  
reads as follows:

"(21) Employment of Husband and Wife Restricted.  
a. None of the foregoing appropriations for salaries  
shall be paid or warrants issued therefor by the  
State Comptroller to any employee until the employee  
shall have filed with the head of the department in  
which he or she is employed an affidavit showing his  
or her marital status, and if married, whether or  
not the spouse of such employee is also employed in  
one of the Departments of this State and the name of  
the Department where such spouse is employed, to-  
gether with the name of such spouse; the head of  
such department, in addition to the statutory affi-  
davit now required to be attached to all payrolls,  
shall also set forth in the payroll affidavit that

Honorable L. J. Wardlaw - page 2

all of his employees have made the required affidavit and also set forth the facts of any said relationship employment as disclosed by said employees' affidavit, together with the name of the department where such spouse is employed, and if such relationship employment does not exist then said affidavit shall so state, and the head of the department and the State Comptroller shall not approve for payment or issue warrants or checks for salaries to either the husband or wife where both said husband and wife are employed in the Departments of this State subject, however, to the following provisions. Affidavits of present employees shall be made and filed with the heads of departments of the State within ten (10) days before the first day of each fiscal year, and persons thereafter employed shall file such affidavits before they begin work; all of said affidavits shall be preserved by the heads of departments for which appropriations are made for at least two (2) years after their dates, which affidavits shall be open to public inspection; said employees' affidavits shall be conclusive evidence of the right of the head of the department to approve the payroll, and the payroll affidavit of the head of the department shall be conclusive evidence to the State Comptroller of his right to issue the warrants. In the event the Comptroller shall hold up issuance or delivery of any warrant by reason of these provisions he shall notify the head of the department affected of his action and such warrants shall not be issued or delivered until the provisions have been complied with to the satisfaction of the State Comptroller; and in the event the head or heads of said departments, so employing said husband and wife, or said husband and wife themselves cannot agree on which affected employee is to be retained in the State's employ, then the State Comptroller shall issue and deliver the warrant to the affected employee who has been continuously employed in the State's service for the longer period of time, and refuse to issue and deliver the warrant to the other affected employee who has been continuously employed in the State's service for a shorter period of time than the other affected relative. The provisions herein shall apply to department heads and members of Commissions but not to the manager and matron of the Corcoran State Farm. The word 'department' as used

Honorable L. J. Wardlaw - page 3

herein shall mean those departments named in this Act and the Soil Conservation Board and shall not apply to other agencies of this State and the employees employed thereby."

Attention is specially directed to that portion of the paragraph which provides in part:

"The word 'department' as used herein shall mean those departments named in this Act and the Soil Conservation Board and shall not apply to other agencies of this State and the employees employed thereby."

This definition of the word "department" makes it plain that this rider does not apply unless both husband and wife are employed in departments named in the Departmental Appropriation Bill or in the Soil Conservation Board. You are therefore advised that this section does not prohibit the employment of a husband in one of the State departments embraced in the Departmental Appropriation Bill, when the wife is employed in another institution or department not named in the Departmental Appropriation Bill.

Very truly yours

APPROVED AUG 21, 1943

ATTORNEY GENERAL OF TEXAS

*L. C. Nelson*  
ATTORNEY GENERAL OF TEXAS BY

*R. W. Fairchild*  
R. W. Fairchild  
Assistant

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APPROVED  
OPINION  
COMMITTEE  
BY *W*