



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Hon. F. M. Trimble
First Ass't State Superintendent
State Department of Education
Austin, Texas

Dear Sir:

Opinion No. 0-6876

Re: Whether a school cafeteria
may employ wife of a school
board member and purchase
groceries from a store owned
by another board member and
related matter

Your request for opinion has been received and carefully considered by this department. We quote from your request as follows:

"At the request of Mr. O. R. Childress, Superintendent of the Rosen Heights Independent School District of Fort Worth, Texas, I am submitting the questions contained in the attached letter for your consideration and opinion."

Three questions are propounded to you by Mr. Childress in his letter to you as follows:

"1. The wife of a school board member works in the lunch room of the school of which her husband is a board member. She is paid from lunch room funds which are derived from monies paid for lunches by pupils and teachers and from federal funds. Is the board violating the anti-nepotism law in this case?

"2. This same school has a board member who owns a grocery store. Is it a violation of the law for the school cafeteria to purchase groceries from this man?

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"3. A member of the board of this school owns the buses operated by this school. This board member does not contract with the school in question but the contract is in the name of another party and the money for the use of the buses is paid the other party. Is there a law violation in this case?"

Articles 432, 433 and 435, Texas Penal Code, read as follows:

Article 432. "Nepotism"

"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, 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. Acts 1909, p. 85, Acts 1915, p. 149"

Article 433. Officers included

"The inhibitions set forth in this law shall apply to and include the Governor, Lieutenant Governor, Speaker of the House of Representatives, Railroad Commissioners, head of departments of the State government, judges and members of any and all Boards and courts established by or under the

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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. Acts 1909, p. 86."

Article 435 Shall not approve account

"No officer or other person included within the third preceding article shall approve any account or draw or authorize the drawing of any warrant or order to pay any salary, fee or compensation of such ineligible officer or person, knowing him to be so ineligible."

We quote from Opinion No. 0-4761 of this department as follows:

"It is a matter of common knowledge that school cafeterias are maintained generally in the schools throughout the State of Texas and the United States. In the case of *Boxeman et al v. Morrow, et al*, 34 S. W. (2) 654, the El Paso Court of Civil Appeals held the following:

"The cafeteria is a necessary convenience, and is not obnoxious to any constitutional or statutory inhibition, and, we think, a reasonable exercise of the discretionary power conferred upon the board of trustees. *Goodman v. School District No. 1, City and County of Denver et al.* (C.C.A.), 32 F. (2d) 586, 53 A.L.R. 92."

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"In this connection we assume that the school district is operating the cafeteria for the good of its students, and is not operating the same as a mercantile establishment or a business for pecuniary gain. In our opinion it would be beyond the authority of the school board to enter into private business. We, therefore, assume that the charges made for food served are reasonably made to cover the costs of the same and the maintenance of the cafeteria.

"Since the board of trustees of an independent school district may maintain a school cafeteria, it is our opinion that the responsibility for the proper operation thereof and the expenditure of funds realized therefrom properly rests with such board."

In connection with the first question we have been given the further information that the wife of the trustee is hired in the school cafeteria as a cook or waitress; that one of the teachers in the school manages the school cafeteria and is paid only his regular salary as a teacher as other teachers in the school; the teacher who manages the cafeteria is the agent of the board of trustees and is under their supervision; that no independent contractor relationship exists between the school board and the teacher who manages the cafeteria and that the trustee's wife is paid out of the funds collected from the school children for payment of their lunches. Under the facts stated, we hold the hiring of the trustee's wife to be unlawful and we answer your first question in the affirmative.

In connection with the second question we have been given the further information that the teacher who manages the cafeteria (as agent of the school board and under the supervision of the board) buys groceries for the cafeteria directly from the grocery store owned by one of the members of the school board. We hold this to be unlawful under the facts stated, and answer your second question in the affirmative. See authorities cited in Opinion No. 0-1014 of this department, a copy of which is enclosed herewith for your information.

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With reference to the third question, we have been informed that the contract was oral but have not been given detailed information as to the specific terms thereof, and in the absence of such information we cannot pass on the third question and respectfully decline to answer same.

Very truly yours

ATTORNEY GENERAL OF TEXAS

Wm. J. Fanning

By

Wm. J. Fanning
Assistant

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APPROVED DEC

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Carroll J. Fehly
FIRST ASSISTANT
ATTORNEY GENERAL

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