



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable M. H. Barton
County Attorney
Rusk County
Henderson, Texas

Dear Mr. Barton:

Opinion No. 0-7433

Re: The Nepotism Statute as it affects the Tax Assessor-Collector of Rusk County, and the wife of the Tax Assessor-Collector's wife's nephew by marriage.

We beg to acknowledge receipt of your request for an opinion upon the above subject-matter, in the following words:

"May the Tax Assessor-Collector of Rusk County employ as a deputy the wife of the Tax Assessor-Collector's wife's nephew, by marriage?"

An analysis of the relation between the Tax Assessor-Collector and the employee accompanies your letter, as follows:

"Geo. E. Wood is Tax Collector-Assessor of Rusk County, Texas.

Mrs. Geo. E. Wood was formerly Mrs. A. T. Boren (divorced)

T. A. Boren is A. T. Boren's brother

David Boren is T. A. Boren's son

David Boren's wife seeks to become Deputy Tax Assessor-Collector in the office of Geo. E. Wood.

Thus David Boren's wife is by marriage the wife of Mrs. Geo. E. Wood's nephew. David Boren being the nephew of Mrs. Wood's former husband."

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Article 432 of the Penal Code, defining "Nepotism", is 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, 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."

Your question should be answered in the affirmative. George E. Wood and David Boren are not related by consanguinity at all. If there is any possible relation, it must be by affinity. The analysis of your situation shows that David Boren is not in anywise related to George E. Wood, the Tax Assessor-Collector by affinity, within two degrees, but on the contrary his relation by affinity, if it exists at all, is far beyond two degrees, and involves a tacking of separate affinity relations, thus breaking the affinity kinship which is not permissible in the computation.

There is no statute defining the relationship by affinity. The common law is the rule of decision by adoption in 1840. The common-law rule is thus stated in 2 Corpus Juris Secundum, at p. 991:

"*See*. At common law, the term has been variously defined as the connection existing in consequence of marriage between each of the married persons and the kindred of the other; the connection formed by marriage which places the hus-

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band in the same degree to the blood relations of the wife as that in which she herself stands towards them and gives the wife the same connection with the blood relation of the husband; the relation contracted by marriage between a husband and his wife's kindred and between a wife and her husband's kindred, in contradistinction from consanguinity, or relation by blood; the relationship which arises by marriage between one of the parties and the blood relations of the other; the tie which arises from the marriage between the husband and the blood relations of the wife, and between the wife and the blood relations of the husband."

So that, Mrs. David Beren is no blood relation of Mrs. George E. Wood, and is therefore no relative by affinity of George E. Wood.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

Oliver Spear
Oliver Spear
ASSISTANT

OS-MR

APPROVED OCT 10 1946

Oliver Spear
ATTORNEY GENERAL OF TEXAS

