



**THE ATTORNEY GENERAL
OF TEXAS**

PRICE DANIEL
ATTORNEY GENERAL

AUSTIN 11, TEXAS

July 13, 1949

Hon. Robert W. Hillin
District Attorney
1st Judicial District
Jasper, Texas

Opinion No. V-853.

Re: The legality of appointment
of the half-brother of an
independent school district
trustee as tax assessor-
collector for the district,
under the submitted facts.

Dear Sir:

You have requested an opinion relative to the construction of Articles 432-435, V.P.C. (Nepotism Law). In connection with the request you submitted the following facts:

"Recently a Mr. Yeager was duly elected to the Board of Trustees of the Brookeland Independent School District, but before he qualified as such, his half-brother was appointed by the Board of Trustees as Tax Assessor Collector for the District. Since the appointment of the Tax Assessor Collector Mr. Yeager has qualified as trustee and is now a duly elected and qualified member of the Board. The question has arisen as to whether or not this constitutes a violation of the nepotism laws Article 432-435 inclusives P.C. 1925 since Yeager will be a duly elected and qualified trustee and will necessarily have to approve the account of the compensation of a Tax Assessor Collector."

In answer to our request for additional information you have informed us that the half brother of the newly elected trustee qualified as tax assessor-collector of the school district prior to the time the newly elected member qualified as a member of the board of trustees.

Article 432, V.P.C., as amended by H. B. 508, Acts of the 51st Legislature, 1949, provides:

"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; provided, that nothing herein contained shall prevent the appointment, voting for, or confirmation of any person who shall have been continuously employed in any such office, position, clerkship, employment or duty for a period of two (2) years prior to the election or appointment of the officer or member appointing, voting for, or confirming the appointment of such person to such office, position, clerkship, employment or duty."

It was held in Attorney General's Opinion No. V-184 that the election of a school trustee who is related within the prohibitive degree to the teacher who had been previously employed would not operate retroactively to void the contract. Attorney General's Opinion No. V-184 followed the holding in Attorney General's Opinion No. 0-6330, which held that the Nepotism Laws were not violated where the prohibitive degree of relationship between the teacher and trustee did not exist at the time the teaching contract was made and that the teacher could complete the term of the existing contract without resignation of the trustee in question since the prohibitive degree of relationship did not exist at the time of the employment. It was further held, however, that any new contract made between the Board of Trustees and the teacher in question would be invalid as in violation of Article 432, V.P.C.

Hon. Robert W. Hillin, page 3 (V-853)

Since the half-brother of the newly elected member of the board of trustees was appointed and qualified as tax assessor-collector for the independent school district prior to the time the newly elected member of the board qualified as trustee for the district, you are advised that the action of the board of trustees of the Brookeland Independent School District appointing the half-brother of the newly elected member of the board, did not violate the provisions of Article 432, V.P.C.

SUMMARY

When a person is appointed tax assessor-collector of an independent school district by the board of trustees of such district and qualifies prior to the time a newly elected member of the board to whom he is related within the prohibitive degree qualifies as member of the board of trustees, there has been no violation by the board of Article 432, V.P.C.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By

John Reeves

John Reeves
Assistant

JR:bh

APPROVED

Joe R. Greenhill

FIRST ASSISTANT
ATTORNEY GENERAL