



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**CRAWFORD C. MARTIN  
ATTORNEY GENERAL**

May 19, 1971

Hon. J. W. Edgar  
Commissioner of Education  
Texas Education Agency  
201 East Eleventh Street  
Austin, Texas 78701

Opinion No. M-862

Re: Construction of Article  
432, Texas Penal Code.

Dear Dr. Edgar:

Your recent letter requesting the opinion of this office concerning the referenced matter states, in part, as follows:

"A teacher was first employed by the school district for the 1969-70 school term commencing her employment about August 22, 1969. She will fulfill her second one-year contract on May 31, 1971. The teacher's brother was elected trustee of the district on April 3, 1971, and qualified for the office on April 7.

"The Board of Trustees has requested that this Agency obtain an opinion from the Office of Attorney General on the following question requiring a consideration of the nepotism law:

"Under the facts submitted, may the teacher be contracted, be proffered a contract for the 1971-72 school term by the school district board on which her brother serves as member?"

Article 432, Texas Penal Code, provides, in part, as follows:

"No . . . member . . . of any . . . school district . . . board . . . shall appoint, or vote for, or confirm the appointment to any . . . position, clerkship, employment or duty, of any person related within the . . . third degree by consanguinity to the person so appointing or so voting, or to any other member of such board . . . of which such person so appointing or voting may be a member, when the salary . . . of such appointee is to be paid for, directly or indirectly, out of or from public funds . . . ; 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 . . . position, clerkship, employment, or duty for a period of two (2) years prior . . . to the election or appointment of the officer or member related to such employee in the prohibited degree." (Emphasis added.)

Attorney General's Opinion No. V-1142 (1951) held that Article 432, supra, did not apply to persons holding offices or positions for at least two years prior to the time the related board member takes office.

In the instant situation, the teacher commenced her employment on or about August 22, 1969. When her brother qualified as a trustee of the district on April 7, 1971, she then could not have held the position nor served as a teacher continuously for at least two years immediately preceding either the election of her brother to the school board or his assumption of such position. The facts submitted clearly show that the teacher has not even completed teaching at the school district through a second annual school term.

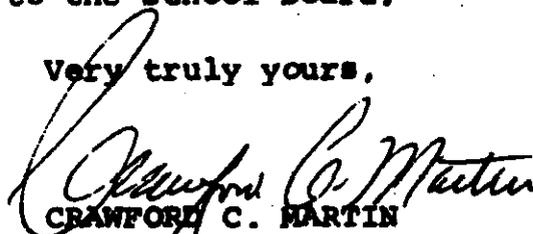
We hold that the exemption proviso of Article 432, underscored supra, does not except from its provisions persons who are contracted for two or more years prior to a kinsman's being elected to an office, but who have continuously performed services for a period of less than two years immediately prior to their kinsman's assumption of office.

You are, therefore, advised that the prohibition of Article 432, supra, is applicable to the instant situation and that such Article prohibits the teacher's employment by the school district for so long as her brother remains a trustee of the district.

S U M M A R Y

Article 432, Texas Penal Code, prevents renewal of a contract with a teacher who has not taught for two or more years prior to the teacher's brother's being elected to the school board.

Very truly yours,



CRAWFORD C. MARTIN  
Attorney General of Texas

Prepared by Austin C. Bray, Jr.  
Assistant Attorney General

**APPROVED:  
OPINION COMMITTEE**

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