



**THE ATTORNEY GENERAL  
OF TEXAS**

**CRAWFORD C. MARTIN  
ATTORNEY GENERAL**

**AUSTIN, TEXAS 78711**

April 18, 1972

Hon. Rayford Price  
Speaker, State of Texas  
House of Representatives  
Austin, Texas

Opinion No. M-1120

Re: Whether the nepotism statutes prohibit a member of one house of the Legislature from employing a person on his staff who is not related to him but is related within the second degree of affinity or the third degree of consanguinity to a member of the other house of the Legislature, and a related question.

Dear Sir:

You have presented the following two questions to this office for an official opinion:

"(1) Do the nepotism statutes prohibit a member of one house of the legislature from employing a person on his staff who is not related to him but is related within the third degree of affinity or the second degree of consanguinity to a member of the other house of the legislature?"

"(2) Do the nepotism statutes prohibit the Speaker of the House of Representatives, who is authorized by House Rules to appoint employees of the House of Representatives, from appointing a person as an employee of the House who is not related to any member of the House but is related within one of the degrees mentioned above to a State Senator?"

Article 432 of the Penal Code of Texas prohibits employment or appointment of persons related within the second degree by affinity or within the third degree by consanguinity. This opinion, of course, will be restricted to these respective degrees of relationship.

This Article prohibits the appointment by

". . . any member of the Legislature, . . . of any person related . . . to any other member of . . . the Legislature . . . when the . . . compensation of such appointee is to be paid for, . . . out of or from public funds. . ."

It is patent that your first question must be answered in the affirmative. The statute clearly prohibits a member of one House of the Legislature from hiring a relative (within the restricted degrees of relationship) of a member of either House of the Legislature when such employee is to be paid from public funds. Article 433 of the Penal Code expressly provides that "members of the Legislature" are subject to the inhibitions of Article 432.

The office of Speaker of the House of Representatives derives from Article III, Section 9 of the Texas Constitution, which reads, in pertinent part, as follows:

". . . The House of Representatives shall, when it first assembles, organize temporarily, and thereupon proceed to the election of a Speaker from its own members; and each House shall choose its other officers."

The Speaker of the House of Representatives is a member of the House of Representatives when elected, and he does not lose his status as a member of the House of Representatives after becoming elected Speaker. As a member of the House of Representatives the Speaker is prohibited by Article 432 from appointing a relative of a State Senator as an employee of the House of Representatives. Article 433 declares that "The inhibitions set forth in this law

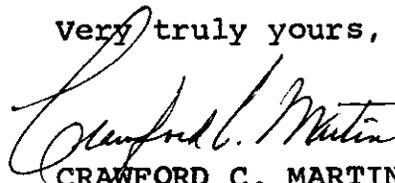
shall apply to and include the . . . Speaker of the House of Representatives."

We therefore answer your second question in the affirmative, since we are convinced by a study of the legislative history of the nepotism laws that Article 432 is fully applicable to the members of the Legislature and the Speaker of the House.

S U M M A R Y

Article 432 and 433, Vernon's Penal Code, prohibit a member of one House of the Legislature from hiring a relative of a member of the other House of the Legislature when such relationship is within the second degree by affinity or within the third degree by consanguinity. The Speaker of the House of Representatives is a member of the House of Representatives and is governed by Articles 432 and 433.

Very truly yours,



CRAWFORD C. MARTIN

Attorney General of Texas

Prepared by Robert W. Gauss  
Assistant Attorney General

APPROVED:  
OPINION COMMITTEE

Kerns Taylor, Chairman  
W. E. Allen, Co-Chairman

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Lonny Zwiener  
Sam. L. Jones, Jr.  
John Grace  
J. C. Davis

SAMUEL D. McDANIEL  
Staff Legal Assistant

ALFRED WALKER  
Executive Assistant

NOLA WHITE  
First Assistant